IN THE

Supreme Court of the United States

OCTOBER TERM, 1904.

THE UNITED STATES,
Petitioner,
vs.
WHITRIDGE, WHITE & CO.

443.

BRIEF OPPOSING PETITION FOR CERTIORARI.

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THE UNITED STATES,
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vs.

MORRIS WHITRIDGE and another.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

It is submitted and confidently believed that the prayer for a writ in this case should be denied.

The petititioner moves with exceptional length of argument, with many supporting tables of figures, with rare strenuousness. The reasons for this are that this issue has been kept in litigation by the Treasury Department for seven years or more, and during that time has been, as shown in Appendix A (hereto annexed), enlightened with fuller argument and more conclusive judicial decisions than perhaps any other issue, not excepting the famous contention as to hat trimmings, which ever arose under the duty laws. Every one of these decisions, including one from this Court, has sustained the contention now sought to be again reviewed.

I.

There have been twelve decisions on the issue —four by the board of general appraisers (written by Judge Somerville and most carefully considered), four by the several circuit courts, three by the circuit courts of appeal, and as stated, one by this Court.

Collectively, these decisions, all of which are printed as Appendix A of this brief for ready reference, and in the order of their rendition, have repeatedly considered and decided every aspect of the controversy, and their doctrine is supported at every point by sound sense and ample precedent.

After the fifth of these decisions,—that of the circuit court of appeals in the first circuit in Beebe's case, *a petition for certiorari was brought here,* was duly supported and opposed in printed briefs, was carefully considered, doubtless, by this Court, *and was denied. The present petition will be found, on examination, substantially a renewal of the former.* As in all similar instances, the petitioner seeks to avoid the adverse force of the earlier denial by alleging (p. 3, brief) that " the issues now presented are *radically* different" etc. But the facts not only do not bear this out; they prove the contrary. There are certain differences in the manner of stating the case, and some alterations in the line of argument. Thus, *the petition in Beebe's case estimated* (see p. 6) *$5,000,000 as the sum at stake. Petitioner now estimates it* (p. 3, Brief) *as "over $1,000,000."* The signers of this brief, in close touch with all the chief claimants, may offer their view that only a fraction of $1,000,000 is involved.

Again, *the petition in Beebe's case said* (p. 6): " *Under existing conditions the question does not arise,* because later Treasury proclamations give the current and legal value of the rupee, founded upon the metal value, which is now referable in India to the gold standard." Whereas *the present petition urges* (p. 2) *that the case "requires construction of the law now in force,"* etc. Both assertions are true; the law is still in force, but the issue is uncurrent and not at all likely to recur, the free coinage of silver having long been abandoned by the great trading nations.

But *Beebe's case and this one are identical in every important fact,* and differ at only one point in their records. Both involve

imports from India, made after 1894, invoiced in silver rupees, dutiable according to value, duly appraised in the currency of India as the law requires, such currency reduced to United States equivalent *at the exchange value of the rupee* as certified by our consul at the date of shipment, and duty reckoned, under orders of the Secretary of the Treasury, on this value instead of the lesser pure metal value duly ascertained at the Mint and proclaimed by the Secretary as required by law. Against that feature of the assessment protest was directed in both cases, and manifestly, the law of each was the law of the other.

The sole difference in the records is that in Beebe's case, the Government joined in a stipulation of the amply evident fact, that the Secretary's order was based on the exchange value, while in the present case the stipulation was refused, the Government seemingly acting on the theory that, as the approval of the courts could not be secured on the full facts as submitted, *a better result might be had by a partial suppression of the facts.* But as will be shown, this fact is almost absurdly manifest, the record and many official publications bristle with its repetition, and the petitioner in the present prayer fully and repeatedly concedes—nay, asserts it. The alleged difference thus proves to be a distinction without a difference.

II.

Only two questions are vital to this case, viz. 1, what was the Secretary's action? and, 2, What action did the law authorize him to take?

There is no room for serious discussion beyond these two. Despite the petitioner's contentions as to finality of the Secretary's reliquidation order, and that its basis or meaning cannot be inquired into by boards or courts, *he evidently cannot intend or desire to protect an official in transcending the statute.* If unreviewable, the Secretary's action must be so because within his statutory power, and to assert that we must not ascertain what it was, is to deny the right to measure it by that power, and thus is to beg the question.

On the other hand, when examined and thus measured, we concede that if found within the power conferred by the statute, it cannot be reversed, nor any further reviewed.

The nature of the official act, and the nature and extent of the official power—these are the two elements on which this case must turn, and on which it has turned in the courts below.

III.

The Secretary ordered reliquidation of the duties here involved, on the basis of the rupee's exchange value, and in defiance of its proclaimed value.

Petitioner's brief and prayer either concede or state this repeatedly. At page 2, the Government contention is stated as being "that the Secretary of the Treasury, under section 25, tariff act of 1894 * * * had power to order reliquidation of the entry in question at the real, exchange or market value of the rupee of the invoice. * * * The importers insist that, irrespective of the cost to them or its exchange or market value, the rupee could not be estimated higher than the value placed on the silver therein." On page 3: "The Government only seeks * * * to enforce equality irrespective of the money standard of the exporting country."

On page 7 (and foot of page 6): "The proviso in section 25, act of 1894, gave the Secretary the right to direct reliquidation of an entry at the *exchange* value of the money specified in the invoice whenever that was 10 per cent. more or less than the metallic value proclaimed at beginning of the quarter, and such right did not depend on a change in the market value of the metal in the coin." These concessions render almost needless the citation of proofs as to what value the Secretary followed, but in fact the record shows (R., p. 15) that the invoice concerned was accompanied by a consular certificate, declaring that at the date of certification the exchange value of the rupee was 32 cents; (p. 16) that there was appended (although wholly unwarranted by any law) to the Mint Director's estimate as promulgated by the Secretary, the foot-note: "Value of

the rupee to be determined by consular certificate"; (p. 16) that the Collector liquidated the entry on the basis of 32 cents per rupee as certified by the consul, such action being as directed by the Secretary in Treas. Decns. 18110; (pp. 16–17) that there was a later liquidation made, on the basis of 20.7 cents per rupee (the proclaimed value) pursuant to Treas. Decn. 23050; (p. 17) that thereafter the Collector sent the entry and invoice to the Secretary, including, of course, the attached consular certificate, such action being also as directed in Treas. Decn. 23050; and (p. 17) that the Secretary returned these papers with order for a new reliquidation at the consular value of 32 cents per rupee as originally adopted.

The position of the Treasury Department was openly and repeatedly announced in many of its "decisions." Thus in Treas. Decn. 17766, the Department stated that when, on an invoice from India, the consul attached a certificate stating the "demand rate of exchange," such certificate showed the true value of the rupee, and should be followed, *as coming within the closing provision of section 25, act of 1894.* In Decn. 18110 the Department assumed to overrule protests of various importers, where it appeared that in liquidation rupees had been converted into United States currency "at the rate of exchange certified to by the United States consul, which was considerably higher than the proclaimed rate." "The evidence," said the Department, "contained in the certification of the United States consular officer on the invoices submitted with the protests is satisfactory to the Department," and the liquidation was approved "under the authority of section 25 of the act of August 28, 1894." In Decn. 18327 the Treasury directed all Collectors that "so long as the actual exchange value of the rupee of India exceeds by more than 10 per cent. the value proclaimed * * * such actual value (and not the proclaimed value) will be taken in accordance with the provisions of section 25 of the Act of August 28, 1894."

In Decn. 22511, Collectors were instructed to assess duty on the proclaimed value of rupees, only, but "If such proclaimed value is less than that shown by the consular certificates accompanying the invoices, you will report the facts immediately to this Department, so that a reliquidation should one be deemed necessary, may be ordered." Decn. 23050 ordered the like practice to be applied on past entries not over one year old, and that "No refunds are to be made pending the receipt of further instructions from the Department."

It was under this last ruling that the Whitridge entry was at one time reliquidated at 20.7 cents per rupee (p. 16, finding 9, record), and the papers forwarded to the Secretary without any actual refund of the excess. Whereupon, as already shown, he at once returned the papers with a statement exactly in accordance with all these public rulings and his known practice, that " satisfactory evidence had been produced to him that the rupees of the invoice were worth, on the day of certification, 32 cents each "—*the exact price certified by the consul as their exchange value*. And at that value translation and reliquidation were ordered to be made, and were made.

It would manifestly be impossible to contend seriously, in the face of this showing, that the Secretary had found and followed any metal value in his reliquidation order in this case. Nor does the petitioner expand such contention, dwelling in his point 1, rather on the alleged finality of the Secretary's order, *whatever may have been its meaning*. But unquestionably its finality must be determined, as already contended, precisely according to what its meaning was. It would be intolerable to assert " The act may have been meant either this or that ; if this, it might be illegal ; if that, not so. But we defy you to discover *which* it was." This Court has repeatedly looked narrowly into the acts of officials, supposedly taken under statute authority, and on finding that in fact they have exceeded such authority, has held their acts invalid.

Shepley vs. Cowan, 91 U. S., 330.
Morrill vs. Jones, 106 U. S., 466.
Robertson vs. Frank Bros., 132 U. S., 17.
Muser vs. Magone, 155 U. S., 246.
U. S. vs. Passavant, 169 U. S., 16.
Amn. School, etc., vs. McAnulty, 187 U. S., 94.

The petitioner insists (p. 24) that no affirmative evidence or admission proves that the metal value was not followed. We insist that the foregoing résumé embodies unmistakable evidence and official admission of it. And *this record contains complete proof, which the general appraisers duly admitted* (pp. 11–14 record), *and which the Government could not contradict, but objected to any ascertainment of facts*, showing beyond cavil that the value adopted was not the value of the metal in the rupee. The customs administrative act (Sec. 15) prescribes that " all the evidence taken by and before said appraisers shall be competent evidence " before the higher courts. Moreover, the Treasury Department's own publica-

tion entitled "Statistical Abstract of the United States," for 1900, the year of this importation—a public and official document cognizable in every court—reports the entire range of prices of silver during that year, and proves that instead of evidence that the metal value of the rupee was 32 cents, the Secretary had conclusive evidence to the contrary, and officially published it to all the world.

"The letter of the Secretary ordering reliquidation of the entry in the present case," says the petitioner "shows that he intended to follow the proviso in section 25." But this is error; it shows that he intended to follow *his interpretation of* the proviso, and this being demonstrated to be an interpretation which abandoned metal value for exchange value, must be held void unless the statute bears such construction. *Like all other matters involved in this petition, all the foregoing was very fully argued out on the petition in Beebe's case.* It is error on the part of petitioner's counsel to suppose (see petitioner's brief, p. 20) that case, when thus petitioned, was burdened with any stipulation as to facts. That was added at a later stage, and as presented to this Court, the Beebe case was just like the present in this aspect. Nor is counsel warranted in suggesting that the writ was denied because the decision of which review was asked was not final. No such point was raised on either side, but the arguments for and against the writ were squarely on the same proposition as now urged. Thus on this question of finality of the Secretary's order, the Solicitor-General said (pp. 5, 6, Beebe Petition): "Without admitting that the Secretary of the Treasury must order a reliquidation of an entry at the metal value as proclaimed by him, must not the order of reliquidation in the present case, finding 'the correct and true value of the Indian rupee at 32.11 cents' and approving liquidation at that rate under the authority of section 25, be construed as being made within the authority of the statute?"

This point was squarely met, as were all others in the Beebe petition, by the brief of respondents, and as these desired such action by this Court as would pass on the merits of the controversy, no stress whatever was laid on the inconclusive nature of the decree below. This Court therefore disposed, by its denial of the writ then prayed for, of the entire question in all its aspects, and ought not now to be asked again for what it then refused.

As pointed out, the refusal to concede that the Secretary's re-

liquidation order in this case involved a resort to exchange value, is the only difference between *this record* and Beebe's—between the *cases*, there is no difference. What comment, then, will fairly meet petitioner's assertion (p. 3, foot) that "This case has been carefully framed to present, without complication, the Government's exact contention"—and his action, in refusing (although urged by counsel) to ask for a writ in Beebe's case, yet in attacking the validity of its decision on this petition, and suggesting (p. 21) that the decision of the Court of Appeals in the present case follows Beebe's—"without adding anything of importance"?

IV.

The statute in force as to foreign money values—Section 25 of the law of 1894—including its proviso, did not warrant translating the Indian rupee at its exchange value.

For over a century prior to 1894, the unchanging basis for reckoning foreign money values has been *to determine the value of the pure metal therein.* At first by congressional *fiat*, later by the yearly ascertainment of the Mint under statute direction, and still later by quarter-yearly ascertainment,—*but always the value ascertained and followed being the value of the bullion.* And as unchanging has been the rule of this Court that these ascertained bullion values must be followed. In

Arthur vs. Richards, 23 Wall. 246;
Cramer vs. Arthur, 12 Otto, 612;
Padden vs. Merritt, 115 U. S., 25;
U. S. vs. Klingenberg, 153 U. S., 93,

merchants tried to avoid the force of these statutory values, and undeniably showed, in some of the cases, that an equitable adjustment of their duties required such avoidance. But in every case it was held that the statute was clear, its continued purpose uniform, its operation certain, calculable, and just in the long run, and that merchants and collectors alike must meet its terms without deviation.

In Arthur vs. Richards *(supra)* this Court, after pointing out reasons why Congress might wisely announce a value for the pound sterling, based on the pure metal therein, proceeded thus:

> "There were also other reasons, having respect to the "fictitious par of exchange so long persisted in by the "bankers of both countries, which made it expedient for "Congress itself to fix the value of the pound sterling."

So that the precise variance, viz.: between bullion and exchange values,—between intrinsic and fictitious values,—on which the petitioner now cries out as menacing dire results unless the Secretary be permitted to adopt the fictitious (mistermed the "true" value in the brief), was discussed and disposed of to opposite effect by this Court, so long ago as 1875.

In the Hadden and Klingenberg cases *(supra)*, as petitioner admits (brief, p. 26) "the importer was required to pay excessive charges." In other words the merchants in those instances suffered precisely the hardships which it is alleged the Treasury suffered in this, and every cry as to undervaluation, violation of treaties, etc., which the Treasury now makes, was in its reverse aspect as forcibly in their mouths then. *But this Court said, they must accept the value determined according to statute.* It is indeed so evident that prior to 1894 the system of valuing foreign currencies had been an unchanging one of adherence to their bullion values, that the petitioner recognizes his chances as depending wholly on the theory that the proviso to the Act of 1894 intended, and enacted, a complete departure from this time-honored system, repeatedly endorsed by this Court as just to all parties. Conceding, as he must, that there had been a gradual and conservative progress in the statutes, as to method only, from occasional declarations of bullion values by Congress to annual ones by the Secretary, based on actual ascertainment at the Mint, and from annual to similar quarterly ones, *but never departing a hairsbreadth from bullion values,* he is nevertheless compelled to contend that the new proviso, attached in 1894 to the otherwise literal re-enactment of an earlier law, meant substantially to nullify that entire system, and substitute exactly the fluctuating, uncertain measure of foreign money values of which this Court said, in Cramer vs. Arthur *(supra)*.

> "Parties cannot go behind the proclamation, any more "than they would have been permitted to go behind the

> " statute, for the purpose of proving, by parol or by financial " quotations in gazettes, that its valuations are inaccurate. " * * * Importers and collectors must abide by the rule " as proclaimed. It would be a constant source of confusion " and uncertainty if every importer could, on every invoice " raise the question of the value of foreign moneys and " coins."

And, again:

> " It is of the utmost consequence to the Government, and " is, on the whole, most beneficial to importers, that the " value of foreign moneys should be officially ascertained, " and that they should be fixed by a uniform method or " rule."

But it seems amply certain, even were there not a half-score or so of uniform decisions to that effect—that the proviso to Section 25 meant or enacted no such change. For:

1. Provisos are not chosen as the vehicles for radical new systems. Their established function is to create limited exceptions to the generality of the law to which they are annexed.

2. There is no reason whatever to suppose Congress desired, in 1894, to abandon the time-honored basis of pure metal values for foreign coins.

3. Had Congress intended to substitute exchange for bullion values, it certainly would not have gone about it by re-enacting the law of 1890 intact, and adding a proviso whose effect would be to expunge it wholly or largely.

4. Nor is it reasonable to suppose that while re-enacting the former law, Congress would endow the Secretary with any such dangerous or arbitrary power as to override it whenever he saw fit.

5. Analysis of the very words of the proviso proves it open to no such construction as the petitioner asks for.

6. The valuation to be put on foreign moneys has no legal connection with appraisement of imports.

1. *The established rule as to provisos.*

Since the earliest reports, a proviso has been recognized by this Court as something reasonably qualifying, and hence engrafted upon

a statute, rather than a thing intended to effect a radical departure therefrom. In

Minis vs. U. S., 15 Pet., 423,

Mr. Justice STORY said (at p. 445):

> "It would be somewhat unusual to find engrafted upon "an act making special and temporary appropriation, any "provision which was to have a general or permanent appli- "cation to all future appropriations. * * * The office "of a proviso, generally, is either to except something from "the enacting clause or to restrain or qualify its generality, "or to exclude some possible ground of misinterpretation of "it," etc.

In United States vs. Dixon, 15 Pet., 141,

the same eminent authority said:

> "Where the enacting clause is general in its language and "objects, and a proviso is afterwards introduced, that pro- "viso is construed strictly, and takes no case out of the en- "acting clause which does not fall fairly within its terms."

Yet the petitioner asks this Court to assume that Congress, in 1894, re-enacted the old system for pure metal valuations, and then by this obscure proviso authorized the Secretary, whenever such value was found to vary 10 per cent. from the exchange value, to abandon that and adopt this, wholly discredited though it was by many decisions, as arbitrary, fictitious and enabling no man to know where he stood. And, moreover, that it authorizes him to adopt exchange values on one and metal values on another invoice precisely parallel, at his will and without stating his reasons. Could any theory of statutory intent be more repugnant to good sense and good conscience, as well as to established tenets of statute construction!

2. *There was no occasion why Congress should, in 1894, abandon pure metal valuations, as to Indian or any other foreign money.*

The most prolonged effort of petitioner's brief is to demonstrate that the Indian coinage situation, of 1890 to 1894, was such that Congress must be supposed to have aimed at a cure, in the proviso to section 25, for evils which it induced.

When, however, we recall that neither this Act, nor its section 25, nor even the proviso thereto, was adopted with any special reference to India, the importance of the alleged history of the rupee coinage (for none of this is in proof, nor cited from any authoritative publication, but merely asserted by counsel) becomes extremely slight.

But even as stated therein, the facts adduced in the brief are not impressive. On July 1, 1894, the bullion value of the rupee was 21.7 cents. and its exchange value 26.1 cents. *Here was no greater variance than had existed at or after 1890 in the bullion value itself, between one ascertainment and the next.* In August 1893 the act was passed. Hence it was full as likely to provide for taking up, on proof, the varying value of silver, as the variance between silver and exchange. Either plan would be new, but one would be revolutionary, and confide an unusually broad power to an executive official, while the other would be a reasonable amendment and improvement on the established system, wholly in line therewith. And one would involve a distortion of statutory principles in view of conditions in a single country (unimportant in trade with ours), while the other would apply to conditions as they varied from a common cause throughout the world.

The petitioner suggests (p. 3) that in an act "to raise revenue," it must be presumed that Congress had flung overboard the whole usage as to pure metal values, so as to grasp the extra revenue to be derived from a resort to the fictitiously high exchange value of Indian rupees. But Congress was not enacting, as the petitioner would have this Court suppose, a law "whose express purpose was to provide revenue," but one "to reduce taxation, to provide revenue for the Government, and for other purposes" (See the title to the Act of 1894). Here again we find that desire to profit by expurgated statement, which is so notable in the attitude of the Treasury throughout this case.

Reasoning from the course of exchange in India from 1890 onward, the petitioner seeks to support the argument that the latest decision of the circuit court of appeals in Beebe's case (which however, he does not seek to bring here for review by writ) was rendered on a complete misapprehension. He thinks Judge PUTNAM erred in asserting that the great excess of exchange over pure metal value of rupees, shown in Beebe's case, "did not exist when the act of 1894 was passed, and it could not have been in contemplation of Congress."

But this also is clearly fallacious. By petitioner's own figures we see that an excess of 4.4 cents in July, 1894, had grown to one of 12 cents in 1898. Thus we must note that Judge PUTNAM's comment was exactly warranted, and unless Congress can be credited with a prophetic vision over the four intervening years, it is evident that it must, in 1894, have contemplated the day-to-day fluctuations of bullion, and by its enactment, proceeded to take proper measures to meet them.

It is fair to add that even the extreme variation of 12 cents between the real and the fictitious value of the rupee was not beyond the range of past occurrences. In Cramer's case *(supra)* the difference was between 40 and 47 cents per florin, and in Hedden's case there would seem to have been a difference of 17 cents on every Mexican dollar. These variations were not large enough to make Congress abandon or modify the pure metal basis.

3. *Congress would not have gone to work as it did, in the Act of 1894, had its intention been as petitioner alleges.*

Manifestly, if the legislative intent had been to depart from bullion values, the way to accomplish it would not have been by re-enacting bullion values.

Petitioner cannot mean to urge on this Court that Congress intended to embody one valuation for India and a different one for all other countries. Whatever basis was to apply to one must apply to all. "Exchange values in certain countries are varying too widely from bullion values, hence, where they do vary widely, they must be taken in lieu of bullion values"—such is the view which petitioner commends to the Court as being that of Congress. To give effect to this view, we are asked to believe that Congress deliberately renewed the pure metal value system, and then resorted to this proviso to undo it again, instead of enacting that the exchange or legal tender value of foreign moneys should be adopted in reckoning duties—thus giving this as a right to all, instead of making the choice of basis optional with the Secretary of the Treasury.

4. *This option said to have been given to the Secretary would be both unusual and dangerous.*

Throughout all the statutes and decisions as to foreign money values, *while computation was always left to executive officials, Con-*

gress never yet gave them power to choose the basis, as the petitioner thinks was done in 1894.

Such officials have a dangerous tendency to assume power and to exceed their powers. Congress has not favored it, and the courts have repeatedly corrected and rebuked it.

Christy vs. Unwin, 3 Per. Dav., 208.
Galpin vs. Page, 18 Wall., 350.
Marriott vs. Brune, 9 How., 634.
Greeley vs. Thompson, 10 How., 225.
Downs vs. U. S., 187 U. S., 496, and cases cited under point III. thereof.

No principle is more cherished by this Court, or more clearly and oft asserted in the above cases, than that the evidence on which men are taxed, or their rights restricted, must be reviewable in the tribunals of law.

The history of the present issue shows forcibly the need of such safeguards, and that the Treasury officials have repeatedly exceeded their powers duly conferred by law. Thus:

A. The Mint Director, empowered by Congress merely to ascertain the metal values of foreign moneys, went wholly beyond his power when, in the foot-note to his table of metal values, he suggested the ignoring of these, which Congress had ordered should be followed.

B. The Secretary of the Treasury transcended his powers when, by the circulars above quoted, he ordered that all duties on Indian goods be calculated according to exchange values as certified by our consuls. Be it remembered that at first he did not even trouble to "order reliquidation," but asserted that the proviso to section 25 warranted an order given prospectively, as to all entries.

C. The Secretary again transcended his powers when (Treas. Decn. 17766) he ordered that protests against such exactions should not be submitted to the general appraisers, as section 14 of the act of June, 1890, directs that they shall, but should be forwarded to him.

D. Again he exceeded his power when (Treas. Decn. 18110) he proceeded to decide such protests adversely, against the specific provision of the same law, that the general appraisers shall decide them.

Pursuant to this surprising policy, the petitioner asks this Court to perceive error in the many rulings already made upon this issue, because they scrutinized the Secretary's actions, and

thereupon found them illegal. Is an official who has made this record, a proper depositary of the vast power of deciding when the conditions warrant him in repudiating the standard of value adopted by Congress, and adopting such other as he sees fit? And that, without any right of review?

Yet the petitioner *naively* propounds (pp. 21 and 24) the problem: since the Secretary's decisions under the currency value statutes have so often been held conclusive, why not also his decision under the proviso?

The manifest answer is, that if "under" the currency laws he had assumed to determine for himself the scope of his power thereunder, and had determined it wrongly, his decision would not have been conclusive: *it is because he has not acted "under" the proviso at all* that he is reviewable now.

5. *The very words of the proviso clearly negative any such intent or effect as the petitioner contends for.*

The body of section 25 literally requires an ascertainment and promulgation of pure metal values. The proviso enacts that when the Secretary is satisfied that "the value * * * of the money specified in the invoice was * * * ten per cent. more or less than the value proclaimed," etc., he may order reliquidation.

Ten per cent. more or less than the value of **what?** Is the Secretary free to order reliquidation at some fictitious value of the rupee of India, if he is satisfied that such value is ten per cent. more than the last-proclaimed metal value of the yen of Japan? Of course not. The value of the *thing proclaimed* must be found changed. Such is the only reasonable or even tolerable reading of the proviso. *And as the thing proclaimed is, and must be, metal value, the thing found variant must be metal value.*

So that the very words of the law enforce the reasonable theory as to what Congress would intend by an enactment on the subject, at the time, in the form, and with the surrounding conditions and past history of this one, and the petitioner's belief that he, but not the importer, is at least freed from the hard, unchanging rule of bullion values, appears as a mere chimera, based on a plain distortion of the natural sense which the law carries.

6. *But the petitioner insists that a construction must be adopted which will free the Government's hands from adherence to bullion values, in order to avoid undervaluations, violation of treaties, etc.*

As already mentioned, the importance of equal valuations for duty purposes, seems not to have impressed the Treasury deeply when, in Hadden's and Cramer's cases, these importers were compelled to pay duty on much more than the actual cost of their goods. Nor was it apparently feared, then, that the application of pure metal valuations on florins or Mexican dollars would gravely complicate our treaty relations. It seems to make a wide difference, whether the collection of excess revenue or a diminution of duties is concomitant.

As a matter of fact, the appraisement of imports for duty purposes is a step wholly separate and distinct from the translation of foreign currency values. Appraisement is directed by law to determine "the actual market value and wholesale price of the merchandise * * * in the principal markets of the country whence the same has been imported." It is thus necessarily an appraisement *in the currency of those markets*, and the law directs that invoices be made in such currency (Sec. 2, Act of June 10, 1890). The goods herein concerned were completely appraised (their invoice value being found correct) before the translation of the rupees was undertaken at all. The latter was a detail merely of computation, to be performed by the Collector.

This principle was fully recognized in the rulings of this Court in the Hadden, Cramer, and other cases above cited. And while perhaps enough has been said about equality, it may be well to point out that such equality as the petitioner thinks this case infringes, is wholly unattainable, and is infringed daily and hourly in every custom house. Until we are able to impose a level price upon the markets of every foreign country, goods can be bought cheaper in one than in another. And when those goods arrive here, our law directs that they be appraised at *market value in the country of exportation*. Thus, in the sense deemed dangerous by the petitioner, treaties are violated whenever a merchant imports—and pays an *ad valorem* duty on—woollens from England at slightly lower prices than similar goods cost in France, or whenever some proprietary chemical, like phenacetin, is brought from Switzerland, where patent monopolies do not thrive, at a price far below its cost in Germany, where patents protect its proprietors against competition.

This Court has determined, in

"The Cherokee Tobacco," 11 Wall., 616,

that no treaty can obstruct the operation of a law afterward enacted by Congress. Nor would there, in any aspect, be violation of our

treaties with other nations, in refunding duties held by the courts to have been taken without warrant of law.

We believe that every aspect of the petition herein has now been considered and fairly answered. *They were all answered, except the fallacious argument based on the history of rupee coinage—when this same issue was sought to be brought up by certiorari in 1901.* Hence this brief is largely a restatement of what was admirably stated by the counsel for Beebe in their brief then filed, and the Court is urged to secure from its archives, and to examine, the two briefs on which the prayer then denied was submitted.

V.

The writ prayed for in this case should be denied.

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APPENDIX A.

THE DECISIONS AS TO THE VALUATION OF RUPEES.

1.

The General Appraisers' decision in Newhall's case was not published, but is discussed in

2.

The U. S. Circuit Court in Newhall's case (91 Fed. Rep., 525—January 7, 1899).

COLT, Circuit Judge. This is a petition for a review of the decision of the Board of General Appraisers upon a protest of the importers relating to the amount of duties growing out of the conversion to American money of the silver rupee, in the case of an invoice of 25 bales of tanned sheepskins imported into the port of Boston from Madras, India. In reducing the appraised value of the merchandise to American money, the Collector adopted the rate of $.285 per rupee, which was the exchange rate as certified in the consular certificate accompanying the invoice. At the date of the Consul's certificate, the value of the rupee, for the purpose of liquidating duties, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, was $.233. The Board of General Appraisers reversed the decision of the Collector, and directed him to reliquidate the duties on the basis of the proclaimed value.

The question presented is whether, under the law, in reducing foreign standard coin to United States currency, the value shall be that of the pure metal of such coin, as proclaimed by the Secretary of the Treasury, or shall be its exchange value.

In the table of estimate of the value of foreign standard coins issued by the Director of the Mint for the quarter beginning January 1, 1896, we find :

Country.	Standard.	Monetary unit.
India.	Silver.	Rupee.
Value in terms of U. S. gold dollar. .233.		Coins. Gold : mohur. ($7.10.5) Silver : rupee and divisions."

Accompanying this table the Secretary of the Treasury issued the following :

WASHINGTON, D. C., January 1, 1896.

" The foregoing estimate, by the Director of the Mint, of the value of foreign coins, I hereby proclaim to be the value of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after January 1, 1896, expressed in any of such metallic currencies."

Attached to the invoice was this consular certificate dated January 11, 1896 :

" Certified that the demand rate of exchange on London this day is $^{1}/_{1}$ $^{31}/_{32}$ per rupee, and that the New York demand rate of exchange on London as quoted by Reuter on 10 inst. is 4.89 per pound sterling ; the value, therefore, in American gold, of the goods referred to in certified invoice No. 17, is as follows :

Rs. 12076.9.0 at $^{1}/_{1}$ $^{31}/_{32}$—£702.17.10.
£702.17.10 at 4.89 —$3,437.15."

According to this certificate, the value of the silver rupee, in terms of the gold dollar of the United States, is .285.

In expressing in United States money the value of foreign standard coins, it has always been the sound policy of the government to take the intrinsic or pure metal value of such coins. Both the importer and government recognized that it was important to have a fixed and permanent value, though such value might be only approximately true, rather than a fluctuating value, based upon financial quotations in gazettes, trade conditions, or rates of exchange, which would necessarily result in uncertainty, confusion, and interminable litigation.

The first tariff act was enacted July 4, 1789 (1 Stat. 24). On July 31, 1789 (1 Stat. 29), an act was passed to regulate the collection of duties, and section 18 provided that the pound sterling of Great Britain and the coins of other countries designated shall be estimated at the rates specified, "and all other denominations of money in value as near as may be to the said rates."

The acts of August 4, 1790 (1 Stat. 167), and of March 2, 1799 (1 Stat., 627), contained similar provisions. The latter act (section 61) declares :

"And all other denominations of money, in value, as nearly as may be to the said rates, or the intrinsic value thereof, compared with money of the United States."

It also contained the following proviso :

"Provided, that it shall be lawful for the President of the United States, to cause to be established fit and proper regulations for estimating the duties on goods, wares and merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government."

From 1799 to 1873 there were various acts specifying the value of additional foreign coins, or changing the rate previously established. Previous to 1873 there were three methods of estimating foreign currencies for assessment of duties : (1) For most foreign standard coins, specified rates prescribed by statute ; (2) for coins not specifically enumerated in the statute, valuations "as near as may be" to the specified rates or "intrinsic value" ; (3) for depreciated currencies issued and circulated under the authority of foreign governments, such valuations as the President might establish by regulations.

By the act of March 3, 1873 (17 Stat. 602 ; Rev. St. § 3564), instead of separate enactments for each coin, there was substituted a general law, as follows :

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value ; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

This act was amended October 1, 1890 (26 Stat. 624), by requiring the estimate by the Director of the Mint and the proclama-

tion by the Secretary to be made quarterly instead of annually. Under this act, the value of foreign standard coins "shall be that of the pure metal," and such value as estimated by the Director of the Mint, and proclaimed by the Secretary of the Treasury, has the force of a statute. Collector v. Richards, 23 Wall. 246; Cramer v. Arthur, 102 U. S. 612; Hadden v. Merritt, 115 U. S. 25, 5 Sup. Ct. 1169; U. S. v. Klingenberg, 153 U. S. 93, 14 Sup. Ct. 790.

In Collector v. Richards (pages 257, 259), Mr. Justice BRADLEY, speaking for the court, said:

"The plain meaning of this language [of act of 1873] is that the value of foreign coins, in United States money, shall be measured by the amount of pure metal contained therein when of standard value; that is, when of the weight and fineness required by the laws and regulations of the country where they are produced. * * * The true method of comparing their money of account with ours, when both are based on actual coin, is to compare the standard coins of the two countries in a perfect state, and to ascertain the actual amount of pure metal in each. This is the result at which Congress seems to have arrived, and, as we think, wisely."

In Cramer v. Arthur (pages 619, 620), the same eminent Judge said, in the opinion of the court:

"The plaintiff seeks to go behind this valuation, and to show that, at the time of the purchase of the goods, the value of the silver florin in Vienna, as quoted in the papers, and as exhibited by the actual rate of exchange, was less than $47^{60}/_{100}$ cents, namely, $45^{46}/_{100}$ cents, and that the value of the paper florin was $43^{71}/_{100}$ cents. This, we think, the plaintiff cannot be allowed to do. The proclamation of the Secretary and the certificate of the Consul must be regarded as conclusive. In the estimation of the value of foreign moneys for the purpose of assessing duties, there must be an end to controversy somewhere. When Congress fixes the value by a general statute, parties must abide by that. When it fixes the value through the agency of official instrumentalities, devised for the purpose of making a nearer approximation to the actual state of things, they must abide by the value so ascertained. If the currency is a standard one, based on coin, the Secretary's proclamation fixes it; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these, and allow an examination by affidavits in every case, would put the assessment of duties at sea. It would create utter confusion and uncertainty. * * * It is of the utmost consequence to the government, and it is, on the whole, most beneficial to importers, that the value of foreign moneys should be officially ascertained, and that they should be fixed by a uniform method or rule."

In Hadden v. Merritt the court (115 U. S. 27, 5 Sup. Ct. 1170) said:

"The value of foreign coins, as ascertained by the estimate of the Director of the Mint and proclaimed by the Secretary of the Treasury, is conclusive upon custom-house officers and importers. * * * There is no value, and can be none, in such coins, except as thus ascertained."

From the origin of the government down to the passage of section 25 of the tariff act of August 27, 1894 (28 Stat. 552), the value of foreign standard coins, for the purpose of liquidating duties, was based upon their intrinsic or pure metal value, as expressed in the money of account of the United States. The method adopted previous to 1873 was by special enactment fixing the value as to certain specified coins, and by treasury regulations as to nonenumerated coins to ascertain "as near as may be" the intrinsic value, and since 1873 by estimate of the Director of the Mint, and proclaimed by the Secretary of the Treasury. The only exception was in the case of a depreciated currency issued and circulated under authority of any foreign government, which, by the act of 1799 (now section 2903 of the Revised Statutes), was subject to regulations established by the President. As to depreciated currency, it was early directed by the President that the consular certificates of value annexed to the invoices should govern.

Section 25 of the tariff act of 1894 reads as follows:

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least 10 per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

This section, until we reach the proviso, is substantially a re-enactment of the previous law. The contention of the government rests upon the proposition that the word "value" in the proviso is not limited to the value "of the pure metal," but extends to other methods of valuation never before adopted with respect to specified foreign standard coins. To adopt this construction is to hold that Congress intended to depart from the long-established rule, and to introduce a new and uncertain mode of valuation of cases coming within the terms of the proviso. The result is that the body of the section provides one way, and one way only, for estimating the value of foreign standard coins, while the proviso covers other ways in conflict with former well-settled principles. Certainly the court should not adopt such a construction, if it be at all doubtful. To hold that, where the value of the foreign coin during the quarter varies less than 10 per centum from the value proclaimed, the pure metal value is to govern, and that when it exceeds 10 per centum the Secretary of the Treasury may adopt any standard of valuation he sees fit, based upon rate of exchange, trade conditions, or financial reports, would result in the introduction of those elements of uncertainty and confusion which the law has aimed especially to prevent. The purpose of the proviso, in our opinion, was not to change the principle in estimating the value of foreign coins, but rather to permit of a different estimate on the same principle, if it should appear at any time during the quarter that the proclaimed value was to a considerable degree at variance with the actual fact existing at the time of any given importation. While the standard of valuation should be fixed and based on intrinsic value, the whole legislation on the subject shows an effort on the part of Congress to provide speedier means for correcting the valuation when it is shown to be wrong. Until 1873 any change in the valuation of specified foreign standard coin required a special enactment. By the statute of 1873 the proclaimed estimate must be made annually. By the statute of 1890 it must be promulgated quarterly. The proviso, in section 25 of the act of 1894, was simply another step in the same direction, and was intended to permit a new estimate of valuation at any time during the quarter where there was found to be an error of at least 10 per centum. This is the natural construction and evident intent of the whole section, and is in harmony with previous legislation. The proviso must be considered in connection with the body of the section and the subject-matter to which it relates. Under a familiar principle of statutory construc-

tion, a proviso is to be strictly construed, and it "takes no case out of the enacting clause which does not fall fairly within its terms." U. S. v. Dickson, 15 Pet. 141, 165. This proviso has reference to the subject-matter treated in the body of the section, and any broad construction of the word "value," which should enlarge its scope as therein defined, would be doing violence to every sound rule of statutory construction, and is contrary to the general context of the proviso itself, taken as a whole and in connection with what precedes. It would introduce confusion and inconsistency into a statute which is otherwise plain and intelligible.

In this case the value of the rupee, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, was fixed at $.233 for the quarter beginning January 1, 1896. The date of the consular certificate attached to the invoice was January 11, 1896, and the value of the rupee in exchange, as therein certified, was equal to $.285. This represents an appreciation of 23 per cent. over the proclaimed value, and therefore comes within the terms of the proviso; and the Collector was right in the action he took if the word "value" in the proviso should be construed to mean value in exchange, or any other standard of value except that "of the pure metal." We hold that the proviso must be limited to the subject-matter treated in the body of the section, and therefore that it is only applicable to those cases where "satisfactory evidence" is produced that the value of the pure metal of such foreign coin has either appreciated or declined 10 per cent. as compared with its proclaimed value. As there is no evidence on this point in this case, the proclaimed value must stand, and the Collector should have liquidated the duties on that basis.

We understand, from the brief of counsel and the later instructions of the Treasury Department, that the government relies mainly on the proviso in section 25 for justification of the Collector's action. In two letters, however, to the Collector, bearing date, respectively, May 12, and June 17, 1896, in reply to an inquiry for instructions, the Secretary of the Treasury says that the rupee must be regarded as a depreciated currency, upon the ground, apparently, that its nominal value, as he states, is $.444, and that, therefore, entries of merchandise covered by invoices made out in such currency should be liquidated at the value certified by the Consul. There seems to be nothing in the facts of the case which warrant the treatment of the silver rupee at the time of this importation as a depreciated currency, under the law. The provision respecting

depreciated currency first appears in the proviso of the sixty-first section of the act of 1799. "This proviso has always continued in force, and now constitutes section 2903 of the Revised Statutes." Cramer v. Arthur, 102 U. S. 612, 617. Speaking of this proviso, Mr. Justice BRADLEY said (page 618), in that case :

"It was passed at a time when the nations of Europe were at war and the United States were neutral. In England and France, and perhaps other countries, specie payments had been suspended, and currencies based on government credit had been adopted. The law seems to have had in view artificial money of this kind ; a depreciated currency, not based on specie, but still 'issued and circulated under authority of the government.' "

The President, acting through the Secretary of the Treasury, has established regulations on the subject. The treasury regulations (Ed. 1874, art. 993, as amended by circular, S. S. 1870) were as follows :

"FIRST. Where the standard value of a foreign currency has been proclaimed by the Secretary of the Treasury in the manner provided by law, or, not having been so proclaimed, has been fixed by special enactment, that value is to be taken in all cases in estimating customs duties, unless Collectors have been otherwise instructed, or unless a depreciation of the value of the foreign currency expressed in an invoice from the standard of that currency shall be shown by consular certificate thereto attached. Secondly. Where the standard value of a foreign currency has not been proclaimed by the Secretary of the Treasury, in the manner provided by law, an invoice expressed in such currency must be accompanied by a consular certificate, showing its value in standard gold dollars of the United States."

In 1891 the provision was amended as to depreciated currency (S. S. 11,661) so as to read :

"If that currency be depreciated, each copy of the invoice should be accompanied by a consular certificate (Form No. 144) stating the percentage of depreciation of the currency actually paid as compared with the corresponding standard coin currency, and the value in such standard coin currency of the total amount of the depreciated currency paid for the merchandise mentioned in the invoice."

Form No. 144 is as follows :

"I, ---- ---, Consul of the U. S. of America, do hereby certify that the true value of the currency of the -------- of --------, in which currency the annexed invoice of merchandise is made out, is

---------- per cent. as compared with the corresponding standard coin currency, and that the value in such standard coin currency of the total amount of the currency actually paid for the merchandise is ----------."

In this case the consular certificate was not in the form required for a depreciated currency. So far as appears, the rupee was not treated as a depreciated currency coming under the regulations of the President, as provided in section 2903, and which calls for a particular form of consular certificate. On the contrary, on January 1, 1896, the value of the silver rupee in money of the United States was fixed, for the three months following, by estimate of the Director of the Mint, and so proclaimed by the Secretary of the Treasury, as provided in section 25 of the act of August 27, 1894. There is no evidence in this record that at the date of the importation the silver rupee was other than a foreign standard coin of India, and so coming under section 25. To say that a currency was depreciated when its value, as certified by consular certificate, was more than 20 per cent. greater than its proclaimed value, would seem an unwarranted construction of section 2903, as it has always been interpreted.

The second question raised by the government under the assignment of errors is that the Board of General Appraisers had no jurisdiction to review the action of the Collector in estimating the value in United States money of foreign coin. This case is not one of disputed appraisement of the value of imported merchandise, as to which the decision of the Board of General Appraisers is made final under section 13 of the customs administrative act of June 10, 1890. U. S. v. Klingenberg, 153 U. S. 93, 102, 14 Sup. Ct. 790; Hilton v. Merritt, 110 U. S. 97, 3 Sup. Ct. 548. The dutiable value in rupees of the merchandise in this case is admitted under the agreed statement of facts; the only issue being whether this court or the Board of General Appraisers has jurisdiction to review the action of the Collector in reducing to United States currency the value of the rupees. Such jurisdiction, if any, must be found in sections 14 and 15 of the act of June 10, 1890. The jurisdiction conferred upon the circuit court by section 15 is co-extensive with the jurisdiction conferred on the Board of General Appraisers by section 14. This was so held by the supreme court in the Klingenberg Case, 153 U. S. 93, 14 Sup. Ct. 790, in the following words:

"The subjects of review by the circuit court, provided for by section 15, extend to all questions of law and fact in respect to

which the Board of General Appraisers have appellate jurisdiction, except the decision of that board as to the dutiable value of merchandise, which is provided for by section 13, and is made conclusive against all parties interested."

In construing section 14, the court says :

" By section 14 the Collector's decision on rate and amount of duties, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), may be the subject of appeal to the Board of General Appraisers."

The Klingenberg Case decided that where the Collector was simply called upon, under the statute, to follow the estimate of value made by the Director of the Mint, and proclaimed by the Secretary of the Treasury, his action was not subject to review by the Board of General Appraisers. If, for example, in the present case, the Collector had adopted the proclaimed rate for the rupee on January 1, 1896, of $.233, his decision would have been final. This conclusion of the court was based upon the rule laid down in Collector v. Richards, Cramer v. Arthur, and Hadden v. Merritt, *ubi supra.* These authorities show the absolute conclusiveness of the value estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury of the standard coin of foreign countries. After holding that the Collector's construction of the value as proclaimed was correct, the court said :

" This being the proper construction to be placed upon the proclamation of July 1, 1892, we are of opinion that the Collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the Board of General Appraisers, under the principle laid down in the authorities already referred to."

All the Klingenberg Case decided was that when the Collector followed such proclaimed value his action was not the subject of appeal, under section 14. The present case is the reverse, for here the Collector refused to be governed by the proclaimed value.

As was said by the circuit court of appeals for the Second circuit, speaking through Judge SHIPMAN, in the case of Wood v. U. S. (1896) 18 C. C. A. 553, 72 Fed. 254, in which the question arose whether the Collector should liquidate the duties according to the value of the silver ruble proclaimed October 1, 1891, or according to the value proclaimed January 1, 1892 :

"In the Klingenberg Case the Collector was simply called upon by the statute to follow the estimate made by the Director of the Mint, and proclaimed by the Secretary of the Treasury, and his action was not the subject of reversal. In this case the Collector was compelled to construe the statutes, and determine which proclamation he should observe. The Klingenberg Case is not an authority in favor of the proposition that an act of the Collector in regard to valuation of foreign coins which is or which may be in violation of the statutes cannot be the subject of review or of reversal by the Board of General Appraisers. On the contrary, the opinion asserts that, by section 14 of the customs administrative act of June 10, 1890, 'if the decision of the Collector imposes an excessive amount of duties, under an improper construction of the law, the importer may take an appeal to the Board of General Appraisers, whose decision on such questions is not made conclusive, as it is in respect to the dutiable value of the merchandise, and, not being conclusive, is subject to review [by the circuit court] under the express provisions of section 15.' "

The question in this case has reference to the "amount of duties," and is therefore reviewable, under sections 14 and 15 of the act of June 10, 1890, by the Board of General Appraisers and by the circuit court. The amount of duties liquidated at the proclaimed value of the rupee would have been less than the amount liquidated at the exchange value. The Klingenberg Case is not an authority upon the proposition that where the Collector declines to accept the proclaimed value of a foreign standard coin, and adopts another standard, thereby increasing the amount of duties upon imported merchandise, his action is not the subject of review, under the act of 1890. Our conclusion is that the Board of General Appraisers and this court have jurisdiction, and that the decision of the board reversing the action of the Collector should be affirmed. The decision of the Board of General Appraisers is affirmed.

3.

The General Appraisers' first decision in Beebe's case (T. D., 21423—July 20, 1899.)

The invoices cover merchandise shipped from India, the currency of the invoice being made out in rupees. The entry was

made on October 18, 1898. Appended to the invoices is a consular certificate, bearing date of August 11, 1898, which reads as follows:

I further certify that the exchange value of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32.11 cents estimated in United States gold dollars.

On February 17, 1899, the Collector liquidated the entry upon a basis of the exchange value of the rupee rated at 32.11 cents, as certified by the Consul. The protest claims that the rupee should have been taken at the value estimated by the Director of the Mint, and promulgated by the Secretary of the Treasury for the quarter of the year in which the goods were exported.

On July 1, 1898, the Secretary of the Treasury, pursuant to the provisions of section 25 of the tariff act of August 28, 1894, issued his proclamation (Circular 124, S. 19591) proclaiming the values of foreign coins, as estimated by the Director of the Mint, in terms of the money of account of the United States. The value of the rupee, in terms of the United States gold dollar, was stated to be $0.199. Appended to these estimates is a footnote, signed by the Director of the Mint, as follows: "Value of the rupee to be determined by consular certificate."

The controversy questions involved in this protest have been settled by the circuit court for the district of Massachusetts, in the case of the United States *v.* Newhall & Co. (91 Fed. Rep., 525), decided by Judge COLT January 7, 1899, affirming an unreported decision of the Board. After elaborate argument, the following propositions were settled in that case:

(1) That the action of the Collector in declining to liquidate the duties upon the basis of the proclaimed value of the silver rupee, and in adopting another standard based on the consular certificate, which liquidation resulted in increasing the amount of duty on the imported merchandise, does not relate to a disputed appraisement, but to the "amount of duties" involved, and that under the provisions of the customs administrative act of June 10, 1890, sections 14 and 15, such action was reviewable on the protest of the importer equally by the Board of General Appraisers and the circuit court; in other words, that the Board of Classification of United States General Appraisers had full jurisdiction of the questions involved. To a like effect in the case of Wood *v.* United States (72

Fed. Rep., 254), commenting on and construing United States *v.* Klingenberg (153 U. S., 93).

(2) That, in reducing the foreign standard coins to United States currency for the assessment of customs duties, the basis in all cases is required to be the value of the pure metal in such coins, and not their exchange value, such as was certified to by the Consul.

(3) That this long-established rule was not changed in any manner or abrogated by the proviso to section 25 of the tariff act of 1894 as to reliquidations in cases where it appears that the value of the foreign money specified in an invoice had varied at the date of the invoice more than 10 per cent from that proclaimed by the Secretary of the Treasury for the given quarter.

(4) That the Collector of Customs are not authorized to depart from such proclaimed value and adopt the exchange value shown by the consular certificate, for the purpose of assessing duties, merely because such consular certificate accompanying an invoice shows the current exchange value of the money of the invoice to be more than 10 per cent greater or less than the proclaimed value for the given quarter.

It necessarily follows from the doctrine of this decision that the annotation made by the Director of the Mint, namely, "The value of the rupee to be determined by consular certificate," was unauthorized by the terms of said section 25, as construed by the court. It would seem, moreover, that the Director of the Mint is required by law to estimate the value of such coins, and could not delegate to any other person the authority thus vested in him.

This case is clearly distinguishable from that class of cases represented by Board decision *in re* Noon Bag Company (G. A. 4288), in which a liquidation had been lawfully made by the Secretary of the Treasury pursuant to the authority conferred by section 25 of the tariff act of 1894, and of which the Board declines to take jurisdiction for the reasons stated in its decision.

Following the principles above cited, as enunciated in the decision of the circuit court in the Newhall case (*supra*), the protest is sustained, and the Collector's decision reversed, with instructions to reliquidate the entry accordingly, in the event of no appeal being taken from this decision by either the Secretary of the Treasury or the Collector of Customs at Boston in the time and manner prescribed by law.

4.

The U. S. Circuit Court in Beebe's case (103 Fed. Rep., 785—August 27, 1900).

COLT, Circuit Judge. This petition for review is governed by the principles laid down in U. S. v. Newhall & Co. (C. C.) 91 Fed. 525. In that case this court reached the following conclusions: (1) In reducing foreign standard coins to United States currency, for the assessment of duties, the basis in all cases is the value of the pure metal in such coins, and not their exchange value. (2) This long established rule was not changed by the proviso to section 25 of the tariff act of 1894 (28 Stat. 552) as to reliquidations where it appeared that the value of the foreign money specified in an invoice had varied at the time of the invoice more than 10 per cent. from that proclaimed by the Secretary of the Treasury for that quarter. (3) A Collector is not authorized, because the consular certificate accompanying an invoice shows the current exchange value of the money of the invoice to be more than 10 per cent. greater or less than the proclaimed value for the quarter, to depart from such proclaimed value, and adopt, for the purpose of assessing the duty, the exchange value shown by the certificate. (4) The action of a Collector in declining to accept the proclaimed value of a foreign standard coin, and in adopting another standard, thereby increasing the amount of duty on imported merchandise, does not relate to a disputed appraisement, but to the amount of duties; and under Customs Administrative Act June 10, 1890, §§ 14, 15, is reviewable, on the protest of the importer, by the Board of General Appraisers and the circuit court.

The present case presents the same state of facts as U. S. v. Newhall & Co., except in two particulars:

First. To the estimate of the pure-metal value of foreign coins, including the rupee, in United States money, by the Director of the Mint, as proclaimed by the Secretary of the Treasury on July 1, 1898, was appended the following note: "Value of the rupee to be determined by consular certificate." This annotation was clearly unauthorized and void under section 25 of the tariff act of 1894, as construed by the court in U. S. v. Newhall & Co.

Second. The Secretary of the Treasury wrote a letter to the Collector, approving his action in liquidating the entry on the basis of

the exchange value of the rupee, as certified by the United States Consul in the invoice, as follows:

"WASHINGTON, D. C., March 31, 1899.

"Collector of Customs, Boston, Mass.—Sir: The department is in receipt of your letter of the 20th ultimo, transmitting the following described protest against your action in estimating the value of the India rupee in certain importations from Madras, India, on the basis of the values shown in the U. S. consular certificates attached to the invoices: Protest 111, of Messrs. Lucius Beebe & Sons, dated Boston, Feb. 17, 1899; importation, 27 bales of tanned goat skins, per Columbian, Oct. 18, 1898; entry liquidated Fed. 17, 1899. You submit the invoices, Nos. 1,610 and 1,611, dated Madras, India, August 11 and September 1, 1898, respectively, for the inspection of the department, and call attention to the fact that the U. S. consular certificates attached thereto state that the exchange value of the rupee, in which currency the said invoices are made out, was, at the date of shipment, 32.11 cents, estimated in U. S. gold dollars, and that inasmuch as said valuation is more than ten per centum greater than the value of the India rupee as estimated by the Director of the Mint for the quarter covering said shipment, you have, following department's rulings, synopses 17,766 and 18,110, assessed duties on the basis of the valuation of the India rupee as certified by the U. S. Consul on said invoices. In reply, I have to inform you that from an inspection of the invoices, and of the U. S. consular certificates attached thereto, the department is satisfied that the correct and true value of the India rupee was, at the date of shipment or the said merchandise, in fact more than ten per centum greater than that estimated by the Director of the Mint for the quarter covering said shipments. Your action in liquidating the entry on the basis of this higher valuation for the India rupee is therefore hereby approved, under the authority conferred upon the Secretary of the Treasury by section 25 of the act of August 28, 1894."

The consular certificate bearing the date of August 11, 1898, reads:

"I further certify that the exchange value of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32.11 cents, estimated in United States gold dollars."

The Collector liquidated the entry February 17, 1899. The entry bears this stamp:

"Custom House, Boston, February 17, 1899. Liquidated."

The proviso in section 25 is as follows :

"The Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

The contention of the government is that the approval by the Secretary of the Treasury in his letter of March 31, 1899, of the action of the Collector was a reliquidation of the entry under this proviso, and that such reliquidation is conclusive, and not subject to review by the Board of General Appraisers or by the circuit court. The proviso says that "the Secretary of the Treasury may order the reliquidation of any entry at a different value." If we are to give any signification to the words "reliquidation" and "different value," they mean, in connection with the preceding part of the section, that there must have been a liquidation of the entry at the proclaimed value before the Secretary can direct a reliquidation at a different value. We do not find in this case any order of the Secretary directing a reliquidation of the entry at a different value from the proclaimed value, nor any reliquidation by the Collector. The record discloses a single liquidation by the Collector upon a basis not in conformity with law, as held by this court in U. S. v. Newhall & Co., and an approval of such action by the Secretary. To hold such approval of the Collector's liquidation based upon a wrong principle, a reliquidation under the proviso of section 25 would, in my opinion, do violence to the express language of the statute. To adopt such a construction is to declare that the Collector, in the first instance, may liquidate an entry, not upon the proclaimed value in pure metal of the foreign coin as required by section 25, but upon any standard of value he chooses to adopt, and that such liquidation is lawful and binding, provided the Secretary of the Treasury ratifies his action under the authority conferred by the proviso. I am unable to assent to the able and ingenious argument of the government's counsel in support of this interpretation of the statute. Whether this case is reviewable by the Board of General Appraisers or by the circuit court depends upon whether there has been a reliquidation under the proviso of section 25. A valid reliquidation under this proviso would seem to be as conclusive as the proclaimed value under the preceding part of the section.

Cramer v. Arthur, 102 U. S. 612, 619, 26 L. Ed. 259; Hadden v. Merritt, 115 U. S. 25, 27, 29 L. Ed. 333; U. S. v. Klingenberg, 153 U. S. 93, 99, 14 Sup. Ct. 790, 38 L. Ed. 647. The decision of the Board of General Appraisers is affirmed.

The court makes the following findings of fact:

(1) The importation in this case consists of 27 bales of tanned goat skins, shipped to Boston, Mass., from Madras, India. Said merchandise was included in two invoices, one dated August 11, 1898, for 13 bales of skins, and the second dated August 31, 1898, for 14 bales of skins.

(2) The invoice dated August 11th showed a total value for the merchandise therein referred to, including certain nondutiable charges, amounting to rupees (silver) 290./6./4, as follows: Rupees (silver) 9,187./15./4.

(3) The invoice dated August 31st showed a total value for merchandise therein referred to, including certain nondutiable charges, amounting to rupees (silver) 337./15./5, as follows: Rupees (silver) 9,150./5./10.

(4) The total value of the merchandise included in both of said invoices, including nondutiable charges, the total of which is rupees 628./5./9, amounts to: Rupees (silver) 18,338./5./2.

(5) Said 27 bales of goat skins were entered for consumption by Lucius Beebe & Sons, the respondents and owners of said merchandise, in the port of Boston and Charlestown, October 18, 1898. After deducting from the invoice value the sum of rupees 628./5./9, for nondutiable charges, the dutiable value, as ascertained at the custom house, Boston, is as follows: Rupees (silver) 17,709./15./5, and also in dollars $5,687, reduced at the rate of 32.11 cents per rupee. Duties were paid by the respondents on October 19, 1898, at the rate of 10 per cent. ad valorem on said $5,687.

(6) On July 1, 1898, the Secretary of the Treasury issued a circular, the material parts of which are as follows:

"Value of Foreign Coins. 1898.

"Department Circular No. 124.

"Treasury Department, Bureau of the Mint.

"WASHINGTON, D. C., July 1, 1898.

"Hon. Lyman J. Gage, Secretary of the Treasury—Sir: In pursuance of the provisions of section 25 of the act of August 28, 1894, I present in the following table an estimate of the values of the standard coins of the nations of the world:

Country.	Standard.	Mon. Unit.	Value in terms of U. S. gold dollars.	Coins
India.	Silver.	Rupee.	.199	Gold, mohur (7.105) Silver; rupee and divisions.

* * * * * * *

"(Appended to the estimates is the following footnote:)
"Value of the rupee to be determined by consular certificate.
"Respectfully yours,
"B. F. BUTLER, Acting Director of the Mint.

"Treasury Department. Office of the Secretary.

"WASHINGTON, D. C., July 1, 1898.

"The foregoing estimate by the Director of the Mint, of the values of foreign coins, I hereby proclaim to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after July 1, 1898, expressed in any of such metallic currencies.

"L. G. GAGE, Secretary of the Treasury."

(7) Attached to the invoice of August 11 was the following consular certificate, dated August 11, 1898:

"I further certify that the exchange value of the rupee, in which currency the annexed notice of merchandise is made out, is at this date 32.11 cents, estimated in United States gold dollars."

(8) Attached to the invoice of August 31st was a similar consular certificate, under date of September 1st.

(9) The entry was liquidated by the Collector on February 17, 1899, at the exchange value of the rupee, namely, 32.11 cents, as certified by the Consul. Thereafter, on the same day, the protest and notice of appeal from said liquidation was duly filed by the respondents.

(10) Reduced into United States money at the rate proclaimed July 1, 1898, namely, 19.9 cents, the entered value of said merchandise, namely, rupees (silver) 17,709./15./5, would amount to $3,524, and the amount of duties payable thereon at 10 per cent. ad valorem would amount to $352.40.

Under the facts, the court makes the following rulings of law:

(1) The Court rules that the note appearing at the foot of the quarterly estimate of coin value, on July 1, 1898, "The value of the rupee to be determined by consular certificate," gave no right, power, or authority to the Collector to liquidate the entry in question at the value of the rupee stated by the United States Acting Consul in the certificates attached to the two invoices.

(2) The Collector, in adopting the exchange value of the rupee as certified by the United States Consul, and in not adopting the proclaimed value for the rupee, in liquidating the entry in question, acted illegally, and the Board of General Appraisers had jurisdiction to order a reliquidation at the proclaimed value.

(3) The decision of the Board of General Appraisers must be sustained unless it is shown that there has been a valid reliquidation of the entry in question under the authority conferred upon the Secretary of the Treasury by the proviso of section 25 of the tariff act of August 28, 1894.

(4) The court rules that there is no evidence of the reliquidation of this entry, and that said entry has never been reliquidated.

(5) The court rules that the letter of the Assistant Secretary of the Treasury, dated March 31, 1899, does not contain an order for the reliquidation of the entry in question, nor does it amount to a reliquidation of the same.

5.

The U. S. Circuit Court of Appeals in the same case (106 Fed. Rep., 75—January 16, 1901).

PUTNAM, Circuit Judge. This is an appeal by the United States against importers, arising under section 25 of the tariff act of 1894, c. 349 (28 Stat. 552), as follows:

"SEC. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act, and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

The proceeding is under sections 14 and 15 of the customs administrative act, approved on June 10, 1890 (26 Stat. 137, 138). The invoice was in silver rupees, and the United States claim that the proviso which concludes section 25 of the act of 1894 applies to the case. Due entry having been made by the importers, the Collector, instead of computing the rupee in accordance with the value proclaimed pursuant to the general terms of that section, liquidated the invoice by estimating it in the manner which it is alleged is permitted to the Secretary of the Treasury on reliquidation according to its proviso. Thereupon, on February 17, 1899, the importers paid the duties, and seasonably and properly protested on the ground that the Collector had assessed the ad valorem duty provided by law by valuing the rupee of the invoice at a rate or value other and more than that estimated and determined by the Director of the United States Mint and proclaimed by the Secretary of the Treasury.

They also claimed in their protest that there should be refunded to them all excessive duties paid in accordance with the liquidation. The Board of General Appraisers on July 20, 1899, reviewed the case, and entered an order as follows: "The protest is sustained, and the Collector's decision reversed, with instructions to reliquidate the entry accordingly." This was in accordance with section 14 of the act approved on June 10, 1890, which provides that a decision of the Board of General Appraisers shall be "transmitted to the proper Collector, or person acting as such, who shall liquidate the entry accordingly," except in case of an appeal. The United States seasonably, by their petition, applied to the circuit court as provided in section 15 of the last-named statute. That court entered a judgment as follows: "The decision of the Board of the United States General Appraisers is hereby affirmed, and petition dismissed." From this judgment the United States seasonably took this appeal. No appeal was taken by the importers.

Subsequently to the protest, on March 31, 1899, the Secretary of the Treasury wrote the Collector, among other things, as follows:

"In reply, I have to inform you that from an inspection of the invoices, and of the U. S. consular certificates attached thereto, the department is satisfied that the correct and true value of the India rupee was, at the date of shipment of the said merchandise, in fact more than ten per centum greater than that estimated by the Director of the Mint for the quarter covering said shipments. Your action in liquidating the entry on the basis of this higher valuation for the India rupee is, therefore, hereby approved, under the authority conferred upon the Secretary of the treasury by section 25 of the act of Aug. 28, 1894."

The United States claim that this communication constituted a reliquidation as provided in section 25 of the act of 1894, and that it operated to validate the prior proceedings by the Collector, or, at least, that it became effective to defeat the protest. That communication was not before the General Appraisers when they made their decision, but it was properly returned into the circuit court as "further evidence," as provided in section 15 of the act of 1890.

The parties have fully argued before us certain substantial issues which they desire to raise with reference to the construction and application of the proviso in section 25 of the act of 1894; but we are unable to consider them, because they are not properly before us on this record. It is impossible for the court to foresee all the consequences involved in the right of an importer to have a liquida-

tion by the Collector in accordance with the proclaimed value of foreign coins, as directed in the general terms of the statute in question, or to foresee how far the rights of the United States and of importers may be involved in unauthorized departures from the precise form of proceeding which the law requires in this respect. Whatever may be the powers of the Secretary of the Treasury, and whatever effect may be given to his reliquidation in accordance with the proviso, it is the legal right of the importer to have his invoice properly liquidated by the collector in the first instance. This right became fixed in the present case by the protest filed by the importers before any action was taken by the Secretary of the Treasury, and it cannot be taken away by any such action subsequent in date to the irregular proceedings at the port of importation. The decision of the Board of General Appraisers, the judgment of the circuit court, and the fact that only the United States have appealed, if the importers could also have done so, leave nothing to be considered by this court except the action of that board in directing the Collector to liquidate the entry in accordance with its order. What proceedings should follow that liquidation, and what may be the effect of those proceedings, we have not undertaken to determine, for the reasons we have already stated. We must affirm the judgment of the circuit court, but, in order that the effect of the affirmation shall not be misunderstood or misapplied, we deem it proper to make it clear that the result of this appeal is without prejudice to the ultimate rights of the parties.

The judgment of the circuit court is affirmed, without prejudice to the right of either party to proceed further, after a proper liquidation by the Collector of Customs at the port of Boston, in accordance with section 25 of the tariff act of August, 1894, including the proviso therein, or in accordance with any other direction of law applicable to the circumstances of the case, if there be any such right.

6.

The U. S. Supreme Court denies the Government's prayer for review of the last above (October term, 1900—March 11, 1901).

7.

The General Appraisers' second decision in Beebe's case (T. D., 23384—November 26, 1901).

The protest in this case involves the construction of the proviso to section 25 of the tariff act of August 28, 1894 (ch. 349, 28 Stat., p. 552), and especially so far as it confers upon the Secretary of the Treasury the power to reliquidate an entry at a different value for the foreign coin of the invoice from that ascertained by the Director of the Mint, on the production of evidence satisfactory to the Secretary, showing the change in value of the Indian rupee (which is the foreign money specified in the invoice) of at least 10 per cent. more or less than the value proclaimed for the quarter in which the consular certification occurred.

The facts of the case have been agreed on in writing, and as to these there is no room for dispute. The merchandise consists of 27 bales of skins, included in two separate invoices, which were imported and entered at the port of Boston for consumption on October 18, 1898, by Lucius Beebe & Sons, who are the protestants. The metal value of the silver rupee of India was ascertained by the Director of the Mint to be $0.199, measured in terms of the United States gold dollar, and this value was proclaimed by the Secretary of the Treasury July 1, 1898, in Department Circular No. 124 (T. D. 19591), relating to the value of foreign coin. The consular agent of the United States at Madras, India, attached the following certificate to one of the invoices, under date of August 11, 1898:

> I further certify that the exchange value of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32.11 cents, stated in United States gold dollars.

A similar certificate was attached to the other invoice, dated September 1, 1898.

On July 23, 1901, in pursuance of a judgment of the United States circuit court of appeals for the first circuit, entered July 16, 1901 (United States *v.* Beebe, 106 Fed. Rep., 75; 45 C. C. A., 230), the Collector at the port of Boston liquidated the amount of duties payable under said entry at the value of 19.9 cents, for each rupee, as proclaimed in the circular issued by the Treasury Department above cited.

On July 25, 1901, the Secretary of the Treasury wrote a letter to the Collector, in which, after referring to the fact that the entry in question had been liquidated on the basis of the value of the rupee as proclaimed by the Secretary of the Treasury for the quarter covering the shipment, namely, 19.9 cents, he proceeded to instruct said Collector as follows:

In this regard, I have to inform you that satisfactory evidence has been produced to the Secretary of the Treasury showing that the value in United States currency of the foreign money of the invoice, namely, the rupee of India, was 32.11 cents at the date of certification, which is 10 per cent more than the value proclaimed during the quarter in which the consular certification occurred.

In view of the fact stated, you are hereby directed to reliquidate the entry hereinbefore mentioned on the basis of this latter value, under the authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 28, 1894.

The entry and other papers submitted are herewith returned.

Respectfully,

O. L. SPAULDING, *Assistant Secretary.*

The agreed statement of facts in this case contains the following further stipulation:

XIV.

The order for reliquidation set forth in the letter in the preceding paragraph was not based upon any difference between the pure metal value of Indian rupees on August 11, 1898, and September 1, 1898, the dates, respectively, of consular certification of said invoices, and the value for said rupee of India contained in the Secretary of the Treasury's proclamation of value for the quarter commencing July 1, 1898, the quarter in which these exportations occurred; and the pure metal value of said rupees in terms of United States gold dollars on each of said dates of consular certification was substantially 19.9 cents, being the value thereof contained in said proclamation. And the value of 32.11 cents for the rupees of said invoices set forth in the letter in Paragraph XIII was not intended to be the pure metal value of such rupees on said dates of certification.

XV.

In accordance with said letter, dated July 25, 1901, on the 26th day of July, 1901, said Collector reliquidated the duty on said goods by taking the rupees of said invoice at the value of 32.11 cents. The amount of duty thus assessed was $568.70.

Against this reliquidation, thus admitted to be based upon the exchange value of the rupee (32.11 cents) and not upon the metal value (19.9 cents), the said Lucius Beebe & Sons duly and seasonably protested, claiming that the reliquidation ordered to be made by the Secretary of the Treasury under the terms of the proviso of said section 25 of the tariff act of 1894 was unauthorized by law and null and void, inasmuch as the only authority conferred by said proviso upon the said Secretary was to reliquidate said entry upon the basis of the *metal value* of said rupee, and not upon the exchange value of said coin under the conditions mentioned in said section, under the authority of which the reliquidation was ordered.

It was further claimed that the right of the Collector to reliquidate this entry, either of his own motion or under instructions from the Secretary of the Treasury, was limited to one year from the date of entry, in the absence of fraud and in the absence of protest, as provided by section 21 of the act of June 22, 1874, which reads as follows (see 18 U. S. Stat., p. 190):

> That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty and such settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud, and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties.

The proper construction of said section 25 of the act of August 28, 1894, has been the subject of protracted litigation in the courts for many years past. In United States *v.* Newhall & Co. (91 Fed. Rep., 525), decided by Judge COLT, January 7, 1899, affirming an unreported decision of this Board, it was held that, in reducing the foreign standard coins of United States currency for the assessment of customs duties, the basis in all cases is required to be the value of the *pure metal* in such coins, and not their *exchange value*, such as was certified by the Consul and adopted by the Secretary of the Treasury in this case.

It was further held that, inasmuch as a liquidation made by the Collector in that case adopting an illegal valuation of the silver rupee resulted in an increase of the amount of duty on imported merchandise, his action was reviewable on the protest of the importer equally by the Board of General Appraisers and the courts.

In other words, the court decided that the Board of Classification of United States General Appraisers had full jurisdiction of the questions involved under the provisions of section 14 of the customs administrative act of June 10, 1890.

The above decision was followed by this Board in the case of Lucius Beebe & Sons (G. A. 4498) decided July 20, 1899, covering the merchandise now under consideration. This decision was affirmed on appeal to the circuit court for the district of Massachusetts on August 27, 1900, in United States *v.* Beebe (103 Fed. Rep., 785). That court, in an elaborate opinion by Judge COLT, fully reaffirmed the doctrine announced in the Newhall case, and held that the Secretary of the Treasury had no authority to direct a liquidation of an entry for customs duties upon the basis of the exchange value of the foreign coin, as declared by the consular certificate; and, further, that the question of reviewing the action of the Collector was one falling within the jurisdiction of the Board of General Appraisers and of the courts.

It was admitted, however, by the court in its opinion that "a valid reliquidation under this proviso (of said section 25) would seem to be as conclusive as the proclaimed value under the preceding part of the section," thus affirming the view taken by this Board in *in re* Noon Bag Company (G. A. 4288), where the Board declined jurisdiction of a protest against a reliquidation of an entry which appeared, so far as shown by the record, *to have been lawfully made* by the Secretary of the Treasury pursuant to the authority conferred on him by said section 25 of the tariff act of 1894.

On appeal being taken from the decision of the circuit court, both the decisions of the court and of this Board were affirmed by the circuit court of appeals in United States *v.* Beebe (106 Fed. Rep., 75; 45 C. C. A., 230); and a petition for a writ of *certiorari* to review the decision of the circuit court of appeals was denied by the United States Supreme Court. (See 180 U. S., 640; 21 Sup. Ct. Rep., 922.)

The following language was used by Judge PUTNAM, in the conclusion of the opinion of the circuit court of appeals above cited:

> The judgment of the circuit court is affirmed without prejudice to the right of either party to proceed further, after a proper liquidation by the Collector of Customs at the port of Boston, in accordance with section 25 of the tariff act of August, 1894, including the proviso therein, or in accordance with any other direction of law applicable to the circumstances of the case, if there be any such right.

This must be construed not to bar, or in any manner interfere with the right of the Secretary of the Treasury to reliquidate the entry in question on satisfactory evidence that the *metal value* of the rupee exceeded by 10 per cent the proclaimed value. It can not be construed to authorize a reliquidation upon the basis of any other value than that decided by the court to be the legal value of the foreign coin in question. It necessarily follows from what we have said, in the light of these numerous court decisions, that the action of the Secretary of the Treasury was not in accordance with the authority conferred on him by law.

In justification of the action of the Secretary of the Treasury, it is contended by the counsel for the Government that the word "value," as used in the proviso of said section 25, may have a different meaning from the same word as used in the section on which it is engrafted.

There are several insuperable objections to this view. The rule is well settled that the proper function of a proviso being to restrict an enacting clause, general in its scope and language, "it is to be strictly construed, and limited to the objects fairly within its terms." (Bragg *v.* Clark, 50 Ala., 363; Sutherland on Stat. Con., sec. 223.) So it is equally well settled that the same word appearing in different parts of a law presumptively is intended to be used in the same sense, unless a different intent be shown by the context of the particular section or paragraph under consideration; nor, in general, is it permissible to "assign different meanings to the same words on the ground of a supposed general intention of the legislature." (Endlich on Inter. of Stat., sec. 41 and 388.)

In view of these principles, it can scarcely be supposed that Congress intended to confer upon the Secretary of the Treasury the authority to reliquidate an entry upon any other basis than the metal value of foreign coins, as mentioned in the body of said section. Such a construction would be in clear violation of the fundamental rule that every part of a statute is to be construed in connection with every other part, and that all of its words and phrases must be construed, if possible, harmoniously, so as to accomplish the legislative intent.

The only further question for consideration is whether this Board, whose jurisdiction has been repeatedly held to be coextensive with that of the circuit court under the provisions of sections 14 and 15 of the customs administrative act, possesses jurisdiction to review and correct the action of the Collector, based, as has been

shown, upon the order of the Secretary of the Treasury. (United States *v.* Klingenberg, 153 U. S., 93 14 Sup. Ct. Rep., 799; Wood *v.* United States, 72 Fed. Rep., 254, 18 C. C. A., 553; United States *v.* E. L. Goodsell Company, 91 Fed. Rep., 519, 33 C. C. A., 661, affirming *in re* Goodsell, G. A. 3880.)

The question is undoubtedly one involving the increased amount of duty imposed upon imported merchandise by the action of the Secretary; and, the facts being undisputed, questions of law only are involved. It is contended by counsel for the Government that we are without jurisdiction to correct the error of law upon which the Collector's and Secretary's action is shown to have been based, because the action of the Secretary in ordering a reliquidation by virtue of the authority conferred upon him by section 25 is conclusive, and whether correct or incorrect is not subject to judicial review. In this view of the case, we are unable to concur. While we admit the general doctrine that, when the law has confided to a special tribunal the authority to decide certain matters arising in the course of duties, the decision of that tribunal, within the scope of its authority, is conclusive, yet we do not overlook the fact that there are certain well-settled exceptions to such a rule. These exceptions were stated by Mr. Justice FIELD, in speaking of the decisions of the Land Office, a bureau of the Department of the Interior, to be as follows:

> The officers of the Land Department are specially designated by law to receive, consider, and pass upon proofs presented with respect to settlements upon the public lands, with a view to secure rights of pre-emption. If they err in the *construction of the law* applicable to any case, or if fraud is practised upon them, or they themselves are chargeable with fraudulent practices, their rulings may be reviewed and annulled by the courts when a controversy arises between private parties founded upon their decisions; but, for mere errors of judgment upon the weight of evidence in a contested case before them, the only remedy is by appeal from one officer to another of the same Department. (Shepley *v.* Cowan, 91 U. S., 340.)

The same doctrine was forcibly stated by Mr. Justice MILLER in Johnson *v.* Towsley (13 Wall, 72), where, after setting forth the rule we have just mentioned as to special tribunals, he added (page 84):

> No reason is perceived why the action of the Land Office should constitute an exception to this principle.

And both of these cases were approved by the Supreme Court in Moore *v.* Robbins (96 U. S., 530, 535). See also Shaw *v.* Kellogg, 170 U. S., 312, 18 Sup. Ct. Rep., 632; Corporation of Catholic Bishop *v.* Gibbons, 158 U. S., 155, 15 Sup. Ct. Rep., 779; Wisconsin Central Railroad Company *v.* Forsythe, 159 U. S., 46, 61; Germania Iron Company *v.* James, 89 Fed. Rep., 811, 32 C. C. A., 348; Puget Mill Company *v.* Brown, 54 Fed. Rep., 987; Railroad Company *v.* Colburn, 164 U. S., 383, 17 Sup. Ct. Rep., 98; and note on page 40 of volume 22 C. C. A. Rep., containing a full review of the cases.)

A like rule was applied to a decision of the Patent Office (another bureau of the Interior Department), where the Commissioner of Patents, under an erroneous view of the law, no question of fact being involved, had refused, under the instructions of his superior, the Secretary of the Interior, to issue a patent to those applying for it. (Butterworth *v.* Hoe, 112 U. S., 50.)

The same principle has frequently been extended to decisions of appraisement tribunals, and particularly to decisions of the Board of General Appraisers, sitting as an appraisement board under the provisions of section 13 of the customs administrative act of June 10, 1890, although that section expressly enacts that the decision of the Board "shall be final and conclusive as to the dutiable value" of imported merchandise. But, as observed by Chief Justice FULLER, "while the general rule is that the valuation is conclusive upon all parties, nevertheless the appraisement is subject to be impeached, where the Appraiser or Collector has proceeded on a *wrong principle, contrary to law*, or has transcended the powers conferred by statute." (United States *v.* Passavant, 169 U. S., 209; 18 Sup. Ct. Rep., 219, 221, citing numerous cases.)

It was upon a like principle that the Board of Classification recently assumed jurisdiction of a case involving the legality of the action of a Collector of Customs in assessing upon certain sugar imported from Russia, a countervailing duty under section 5 of the tariff act of July 24, 1897, which provides that whenever any country shall pay or bestow any bounty or grant upon the exportation of any article, there shall be levied an additional duty equal to "the net amount of such bounty or grant." The statute expressly enacts that "the net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury," who is empowered to make all needful regulations for the collection of such additional duties. After observing that, if in fact any bounty or grant was bestowed, the

Secretary's finding as to its amount, "being made in pursuance of a special statutory authority, would be quite as conclusive on this Board and the courts as the finding of the value of foreign coin by the Director of the Mint, under the provisions of section 25 of the tariff act of 1894," the Board said (see *in re* Downs, G. A. 4912):

It is conceded, however, that the decision of the Secretary as to whether the laws of Russia do, in fact, bestow such a bounty or grant, is reviewable by this Board, as it *involves the construction of the laws of Russia* relating to the precise subject-matter covered by said section above cited. The jurisdiction of the Board in this particular has been sustained by the United States circuit court of appeals for the second circuit in the recent case of United States *v.* Hill Brothers Company, decided February 8, 1901 (107 Fed. Rep., 107).

This decision of the Board has since been affirmed by the United States Circuit court at Baltimore, per MORRIS, *J.*; opinion delivered in October last and not yet reported, the jurisdiction of the Board not having been questioned.

As the facts which have been agreed upon by counsel make it clear that the Secretary's action was based entirely on an erroneous view of the law, we entertain no doubt that this Board and the courts have jurisdiction in the premises. The case of Ferry *v.* United States (85 Fed. Rep., 550, which affirmed a principle adopted by this Board in *in re* Rugiero, G. A. 1024; see also *in re* Levac, G. A. 4830) in no way conflicts with the above view. The question there involved was the abatement or refunding of duties paid on merchandise which had been destroyed in whole or in part by accidental fire or other casualty while in the custody of the Government, and it was held that the jurisdiction of the Board of General Appraisers did not extend to such cases, but that the provisions of section 2984 of the Revised Statutes made the Secretary's jurisdiction exclusive. The subject-matter, it will be noted, was one having no relations to the rate or amount of duty on imported merchandise, within the scope of section 14 of the customs administrative act of June 10, 1890, which creates and defines the jurisdiction of this Board.

Our conclusion, therefore, is that the instructions of the Secretary of the Treasury to the Collector of Customs at Boston, directing that officer to reliquidate the entry of Lucius Beebe & Sons, on a basis of 32.11 cents value for the Indian rupee, were based on an erroneous view of the law as embodied in section 25 (with the

proviso thereof) of the tariff act of August 28, 1894, and that the true construction of said section and proviso requires that, "in reducing the foreign standard coins to United States currency for the assessment of customs duties, the basis in all cases is required to be the value of the *pure metal* in such coins, and not their *exchange value*," as held by Judge COLT in Newhall's case (91 Fed. Rep., 525), and reaffirmed in Beebe's case (103 Fed. Rep., 785), and again by the circuit court of appeals in 45 C. C. A., 230.

The construction given by the Treasury Department to any law affecting its arrangements and concerns is certainly entitled to great respect. Still, however, if it is not in conformity to the true intendment and provisions of the law, it can not be permitted to conclude the judgment of a court of justice. The construction given by any department of the Executive Government is necessarily *ex parte*, without the benefit of an opposing argument, in a suit where the very matter is in controversy; and when the construction is once given there is no opportunity to question or revise it by those who are most interested in it as officers, deriving their salaries and emoluments therefrom, for they can not bring the case to the test of a judicial decision. (Opinion of STORY, *J.*, in United States *v.* Dickson, 15 Peters, 141, 161; cited in United States *v.* Murphy, 32 Fed. Rep., 376, 382.)

The act of the Secretary being unauthorized by law was necessarily null and void, and afforded no validity whatever to the action of the Collector, who was the Secretary's agent for the reliquidation of the entry upon an erroneous basis. So far as the record is concerned, therefore, the reliquidation must be treated as that of the Collector alone.

In this respect, the case under consideration differs from Board decision *in re* Noon Bag Company (G. A. 4288), where the record failed to disclose that the Secretary had acted outside the authority conferred on him by statute.

As to the contention made by the importers that the Government's right to reliquidate the entry was barred by the statute of limitations prescribed by section 21 of the act of June 22, 1874, above cited, it is only necessary to say that, while we strongly incline to the view that the point is well taken, it is unnecessary that we should base our decision upon that point, which we, therefore, leave undecided.

The protest is sustained and the decision of the Collector reversed, with instructions to reliquidate the entry accordingly.

8.

The U. S. Circuit Court in Beebe's second case (117 Fed. Rep., 670—September 4, 1902).

COLT, Circuit Judge. This is a second petition for review, relating to the same entry of merchandise. The decisions of the circuit court of appeals and of the circuit court on the first petition are found in 45 C. C. A. 230, 106 Fed. 75, and 103 Fed. 785. While the specific questions now presented may differ in form, the principles which underlie and control both these petitions were carefully considered by this court in U. S. v. J. Allston Newhall & Co. (C. C.) 91 Fed. 325. That case involved the construction of section 25 of the tariff act of 1894, and especially the proviso thereof (28 Stat. 552); and this is true of both these petitions. In U. S. v. J. Allston Newhall & Co. this court said:

"This section, until we reach the proviso, is substantially a reenactment of the previous law. The contention of the government rests upon the proposition that the word 'value' in the proviso is not limited to the value 'of the pure metal,' but extends to other methods of valuation, never before adopted with respect to specified foreign standard coins. To adopt this construction is to hold that Congress intended to depart from the long-established rule, and to introduce a new and uncertain mode of valuation in cases coming within the terms of the proviso. The result is that the body of the section provides one way, and one way only, for estimating the value of standard coins, while the proviso covers other ways in conflict with former well-settled principles. Certainly, the court should not adopt such a construction, if it be at all doubtful. To hold that, where the value of the foreign coin during the quarter varies less than ten per centum from the value proclaimed, the pure-metal value is to govern, and that when it exceeds ten per centum the Secretary of the Treasury may adopt any standard of valuation he sees fit, based upon rate of exchange, trade conditions, or financial reports, would result in the introduction of those elements of uncertainty and confusion which the law has aimed especially to prevent. The purpose of the proviso, in our opinion, was, not to change the principle in estimating the value of foreign coins, but rather to permit of a different estimate on the same principle, if it should appear at any time during the quarter that the proclaimed value was to a considerable degree at variance with the actual fact existing at the time of any given importation. While the standard of valuation should be fixed and based on intrinsic value, the whole legislation on this subject shows an effort on the part of Congress to

provide speedier means for correcting the valuation when it is shown to be wrong. Until 1873 any change in the valuation of specified foreign standard coin required a special enactment. By the statute of 1873 the proclaimed estimate must be made annually. By the statute of 1890 it must be promulgated quarterly. The proviso, in section 25 of the act of 1894, was simply another step in the same direction, and was intended to permit a new estimate of valuation at any time during the quarter, where there was found to be an error of at least ten per centum. This is the natural construction and evident intent of the whole section, and is in harmony with previous legislation. * * * The second question raised by the government under the assignment of errors is that the Board of General Appraisers had no jurisdiction to review the action of the Collector in estimating the value in United States money of foreign coin. This case is not one of disputed appraisement of the value of imported merchandise, as to which the decision of the Board of General Appraisers is made final under section 13 of the customs administrative act of June 10, 1890. U. S. v. Klingenberg, 153 U. S. 93, 102, 14 Sup. Ct. 790, 38 L. Ed. 647; Hilton v. Merritt, 110 U. S. 97, 3 Sup. Ct. 548, 28 L. Ed. 83. The dutiable value in rupees of the merchandise in this case is admitted under the agreed statement of facts; the only issue being whether this court or the Board of General Appraisers has jurisdiction to review the action of the Collector in reducing to United States currency the value of the rupees. Such jurisdiction, if any, must be found in sections 14 and 15 of the act of June 10, 1890. The jurisdiction conferred upon the circuit court by section 15 is coextensive with the jurisdiction conferred on the Board of General Appraisers by section 14. This was so held by the supreme court in the Klingenberg Case (153 U. S. 93, 14 Sup. Ct. 790, 38 L. Ed. 647) in the following words: 'The subjects of review by the circuit court, provided for by section 15, extend to all questions of law and fact in respect to which the Board of General Appraisers have appellate jurisdiction, except the decision of that Board as to the dutiable value of merchandise, which is provided for by section 13, and is made conclusive against all parties interested.' In construing section 14, the court says: 'By section 14 the Collector's decision on rate and amount of duties, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), may be the subject of appeal to the Board of General Appraisers.' The Klingenberg Case decided that, where the Collector was simply called upon, under the statute, to follow the estimate of value made by the Director of the Mint and proclaimed by the Secretary of the Treasury, his action was not subject to review by the Board of General Appraisers. If, for example, in the present case, the Collector had adopted the proclaimed rate for the rupee on January 1, 1896, of $.233, his decision would have been final. This conclusion of the court was based upon the rule laid down in Collector v. Richards, Cramer v. Arthur, Hadden v. Merritt, *ubi supra*. These authorities

show the absolute conclusiveness of the value estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury of the standard coin of foreign countries. After holding that the Collector's construction of the value as proclaimed was correct, the court said: 'This being the proper construction to be placed upon the proclamation of July 1, 1892, we are of the opinion that the Collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the Board of General Appraisers, under the principle laid down in the authorities already referred to.' All the Klingenberg Case decided was that, when the Collector followed such proclaimed value, his action was not the subject of appeal under section 14. The present case is the reverse, for here the Collector refused to be governed by the proclaimed value. * * * The question in this case has reference to the 'amount of duties,' and is, therefore, reviewable under sections 14 and 15 of the act of June 10, 1890, by the Board of General Appraisers and by the circuit court. The amount of duties liquidated at the proclaimed value of the rupee would have been less than the amount liquidated at the exchange value. The Klingenberg Case is not an authority upon the proposition that where the Collector declines to accept the proclaimed value of a foreign standard coin, and adopts another standard, thereby increasing the amount of duties upon imported merchandise, his action is not the subject of review, under the act of 1890. Our conclusion is that the Board of General Appraisers and the court have jurisdiction, and that the decision of the Board reversing the decision of the Collector should be affirmed."

Following the conclusions in U. S. v. J. Allston, Newhall & Co., this court, on the first petition in the case at bar, held:

(1) In reducing foreign standard coins to United States currency for the assessment of duties, the basis in all cases is the value of the pure metal in such coins, and not their exchange value.

(2) This long-established rule was not changed by the proviso to section 25 of the tariff act of 1894 (28 Stat. 552), as to reliquidations, where it appeared that the value of the foreign money specified in an invoice had varied at the time of the invoice more than 10 per cent. from that proclaimed by the Secretary of the Treasury for that quarter.

(3) A Collector is not authorized, because the consular certificate accompanying an invoice shows the current exchange value of the money of the invoice to be more than 10 per cent. greater or less

than the proclaimed value for the quarter, to depart from such proclaimed value, and adopt, for the assessment of duties, the exchange value shown by the certificate.

(4) The action of a Collector in declining to accept the proclaimed value of a foreign standard coin, and in adopting another standard, thereby increasing the amount of duty on the imported merchandise, does not relate to a disputed appraisement, but to the amount of duties; and, under Customs Administrative Act June 10, 1890, §§ 14, 15, is reviewable, on the protest of the importer, by the Board of General Appraisers and the circuit court.

(5) The Collector, in adopting the exchange value of the rupee as certified by the United States Consul, and in not adopting the proclaimed value for the rupee, in liquidating the entry in question, acted illegally, and the Board of General Appraisers had jurisdiction to order a reliquidation at the proclaimed value.

(6) The decision of the Board of General Appraisers must be sustained unless it is shown that there has been a valid reliquidation of the entry in question under the authority conferred upon the Secretary of the Treasury by the proviso of section 25 of the tariff act of August 27, 1894.

(7) A valid reliquidation under this proviso is a reliquidation based upon the required difference between the pure metal value of the foreign coin and the proclaimed value, and is as conclusive as the proclaimed value under the preceding part of the section.

(8) The note appearing at the foot of the quarterly estimate of coin value on July 1, 1898, "The value of the rupee to be determined by consular certificate," gave no right, power, or authority to the Collector to liquidate the entry in question at the value of the rupee stated by the United States Acting Consul in the certificates attached to the two invoices.

Upon further consideration, the court sees no reason to change or modify the views expressed or the conclusions reached in these opinions. On the former petition, concerning the entry under consideration, the importers contend: First, that there had been in fact no reliquidation of the entry; and, second, that the reliquidation of the entry on any other basis than that of pure-metal value of the foreign coin was unauthorized. The circuit court considered both

these propositions, and decided both questions in favor of the importers. On appeal the circuit court of appeals properly only considered the first question, and, having determined that there had been in fact no reliquidation, affirmed the judgment of the court below on that ground, but "without prejudice to the right of either party to proceed further, after a proper liquidation by the Collector of Customs at the port of Boston, in accordance with section 25 of the tariff act of August, 1894, including the proviso therein." After the decision of the circuit court of appeals, the Collector liquidated the duties on the merchandise at the value of 19.9 cents for each rupee, in accordance with the proclaimed value of the rupee in pure metal, as set forth in the treasury circular of July 1, 1888. Thereupon the Secretary of the Treasury informed the Collector that "satisfactory evidence" had been produced to him "showing that the value in United States currency of the foreign money of the invoice, namely the rupee of India, was 32.11 cents at the dates of certification, which is ten per centum more than the value proclaimed during the quarter in which the consular certification occurred;" and in view of this fact he directed the Collector "to reliquidate the entry hereinbefore mentioned on the basis of this latter value [32.11], under the authority conferred upon the Secretary of the Treasury by the proviso to section 25 of the act of August 27, 1894." The Collector accordingly reliquidated the duty by taking the rupees of the invoice at the value of 32.21 cents each. By the agreed statement of facts it appears that this order for reliquidation was not based upon any difference between the pure-metal value of the rupee on August 11, 1888, and September 1, 1898, the dates, respectively, of the consular certificates of the invoices, and the proclaimed value for the quarter beginning July 1, 1898; that the pure-metal value of the rupee, in terms of United States gold dollars, on the dates of consular certification, was substantially 19.9 cents, being the value contained in the proclamation; and that the value of 32.11 cents was not intended to be the pure-metal value of the rupee on the dates of certification. The importers duly protested against this reliquidation, the Board of General Appraisers sustained the protest, and the United States has brought this petition for review in the circuit court.

In view of the decisions of this court, there is only one point now urged by the government which calls for serious consideration. It is contended that the action of the Collector cannot be impeached, because the power vested in the Secretary of the Treasury, under the

proviso of section 25 is absolute, and that his order for reliquidation, whether justified or not by the proper construction of the proviso, is not subject to judicial review. This argument is based on the ruling of the supreme court that the proclaimed value of foreign coins estimated by the Director of the Mint is final, and cannot be reviewed by the Board of General Appraisers or the courts, and the ruling of the court on the first petition for review in the present case, that a valid reliquidation under the proviso of section 25 is as conclusive as the proclaimed value under the preceding part of the section. Collector v. Richards, 23 Wall. 246, 257, 259, 23 L. Ed. 95; Cramer v. Arthur, 102 U. S. 612, 619, 620, 26 L. Ed. 259; Hadden v. Merritt, 115 U. S. 25, 27, 5 Sup. Ct. 1169, 29 L. Ed. 323; U. S. v. Klingenberg, 153 U. S. 93, 14 Sup. Ct. 790, 38 L. Ed. 647. To determine the weight and force of this argument, it is well to point out the issue before the supreme court in those cases, and the scope of the ruling on the question of conclusiveness.

In Collector v. Richards, the Director of the Mint, acting within terms of the act of March 3, 1873, and in conformity with the powers conferred thereunder, estimated the pure-metal value of the franc of France at 19 cents and 3 mills, and this value was proclaimed by the Secretary of the Treasury on January 1, 1874. The court held that the act of March 3, 1873, repealed former acts relating to the value of the franc, and that the Collector's action in following the proclaimed value was correct. In construing the act of 1873, which in this part is identical with section 25 of the act of 1894, Mr. Justice BRADLEY, speaking for the court, said :

" The important words of the first section are as follows : ' The value of the foreign coin, as expressed in the money of the account of the United States, shall be that of the pure metal of such coin of standard value.' The plain meaning of this language is that the value of foreign coins in United States money shall be measured by the amount of pure metal contained therein when of standard value ; that is, when of the weight and fineness required by the laws and regulation of the country where they are produced. * * * The true method of comparing their money of account with ours, when both are based on actual coin, is to compare the standard coins of the two countries in a perfect state, and to ascertain the actual amount of pure metal in each. This is the result at which Congress seems to have arrived, and, as we think, wisely." 257 Wall. 257, 259, 23 L. Ed. 95.

Cramer v. Arthur also arose under the act of 1873. The Director of the Mint, in conformity with the statute and the method therein

prescribed, estimated the values of foreign standard coins in United States money, and these values were duly proclaimed by the Secretary of the Treasury. The pure-metal value of the Austrian florin was fixed at 47.60 cents. The importer sought to go behind this value, and show a different value. This was refused on the ground that the proclaimed value was conclusive. In the opinion of the court Mr. Justice BRADLEY said:

"The plaintiff seeks to go behind this valuation, and to show that at the time of the purchase of the goods the value of the silver florin in Vienna, as quoted in the papers, and as exhibited by the actual rate of exchange, was less than 47.60 cents, namely, 45.60 cents, and that the value of the paper florin was 43.71 cents. This, we think, the plaintiff cannot be allowed to do. The proclamation of the Secretary and the certificate of the Consul must be regarded as conclusive. In the estimation of the value of foreign moneys for for the purpose of assessing duties there must be an end to controversy somewhere. When Congress fixes the value by a general statute, parties must abide by that. When it fixes the value through the agency of official instrumentalities, devised for the purpose of making a nearer approximation to the actual state of things, they must abide by the values so ascertained. If the currency is a standard one, based on coin, the Secretary's proclamation fixes it; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these, and allow an examination by affidavits in every case, would put the assessment of duties at sea. It would create utter confusion and uncertainty. * * * It is of the utmost consequence to the government, and it is, on the whole, most beneficial to importers, that the value of foreign moneys should be officially ascertained, and that they should be fixed by a uniform method or rule." 102 U. S. 619, 620, 26 L. Ed. 259.

Hadden v. Merritt likewise arose under the act of 1873. Here, also, the Director of the Mint had estimated the pure-metal values of foreign standard coins, which were duly proclaimed by the Secretary of the Treasury. The invoices of the merchandise were made out in Mexican dollars. It was held that the proclaimed value was conclusive upon custom-house officers and collectors, and could not be impeached by evidence showing that the Director of the Mint had made a mistake or miscalculation in his estimate by expressing the value of the Mexican dollar in the silver dollar of the United States, and not in the standard gold dollar. In that case Mr. Justice MATTHEWS, speaking for the court, said:

"The value of foreign coins, as ascertained by the estimate of the Director of the Mint and proclaimed by the Secretary of the

Treasury, is conclusive upon custom-house officers and importers. No errors alleged to exist in the estimate, resulting from any cause, can be shown in a judicial proceeding to affect the rights of the government or individuals. There is no value, and can be none, in such coins, except as thus ascertained; and the duty of ascertaining and declairing their value, cast upon the Treasury Department, is *the performance of an executive function, requiring skill and the* exercise of judgment and discretion, which precludes judicial inquiry into the correctness of the decision. If any error in adopting a wrong standard, rule, or mode of computation, or in any other way, is alleged to have been committed. there is but one method of correction. That is to appeal to the department itself. To permit judicial inquiry in any case is to open a matter for repeated decision, which the statute evidently intended should be annually settled by public authority; and there is not, as is assumed in the argument of the plaintiff in error, any such positive and peremptory rule of valuation prescribed in the statute as serves to limit the discretion of the Treasury Department in making its published estimate, or would enable a court to correct an alleged mistake or miscalculation. The whole subject is confined by the law exclusively to the jurisdiction of the executive officers charged with the duty, and their action cannot otherwise be questioned." 115 U. S. 27, 28, 5 Sup. Ct. 1170, 29 L. Ed. 333.

U. S. v. Klingenberg arose after the passage of the customs administrative act of June 10, 1890 (26 Stat. 131). The Director of the Mint, in conformity with the act of 1873. had estimated the pure-metal value of foreign standard coins, and such values were duly proclaimed by the Secretary of the Treasury on July 1, 1892. In reducing the currency of the invoices into United States money, the Collector estimated the florin at $0.482, which was the proclaimed value of the gold florin. The importer protested against this action, insisting that the Collector should have adopted the silver florin as the standard value, it having been referred to in the proclamation as the "nominal standard." Having first determined that the proper construction of the proclamation required the Collector to adopt the gold florin as the pure metal and better standard, rather than the silver florin, or "nominal standard," the court held that "the Collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the Board of General Appraisers, under the principle laid down in the authorities already referred to." 153 U. S. 100, 14 Sup. Ct. 793, 38 L. Ed. 647. These authorities were Collector, etc., v. Richards, and the other cases already discussed.

In all these cases it will be observed that the Director of the Mint, acting within the scope of the powers conferred by statute, made his estimates on the pure-metal basis. It is manifest, therefore, that the rule of conclusiveness laid down in these cases goes to this extent, and no further: Where the pure-metal values of foreign standard coins as provided by the statute have been estimated by the Director of the Mint and proclaimed by the Secretary of the treasury, such values are conclusive, and cannot be impeached by evidence of mistake or miscalculation. In other words, the pure-metal estimate by the Director of the Mint, as a fact found, is final, and the Collector's action in conformity with such finding is not subject to judicial review, either under the old law, where the importer brought suit against the Collector in the circuit court to recover the duties paid, or under the customs administrative act of 1890, where an appeal is taken from the Collector's decision to the Board of General Appraisers. Assuming the word "value" in the proviso of section 25 to mean "value in pure metal," as the court has already determined, the doctrine of conclusiveness applied to reliquidations goes to this extent, and no further: The order for reliquidation of an entry by the Secretary of the Treasury upon evidence satisfactory to him, based on the required difference between the pure-metal value of the foreign money specified in the invoice and the proclaimed value, is conclusive, and the action of the Collector thereunder is not reviewable by the Board of General Appraisers or the courts.

But this is not the issue presented in the case at bar. The importers are not seeking to impeach the order for reliquidation by evidence that the Secretary's finding of fact respecting the difference between the pure-metal value of the rupee and its proclaimed value at the date of the consular certifications was erroneous. There is no such question involved in the present case. On the contrary, it is stipulated that the order for reliquidation was not based upon any difference in metal values, and that the pure-metal value of the rupee on the dates specified was substantially the same as the proclaimed value. The case now presented raises no question of fact, but only questions of law. The fundamental inquiry has reference to the power of the Secretary, under the proviso, to make the order in question; and this court having determined that the proviso does not authorize him to make such an order, the specific question under discussion is whether, under such circumstances, the order is unimpeachable. Is an order for reliquidation, founded upon a wrong

interpretation of the statute, conclusive, and the Collector's action thereunder not subject to review? Can the Secretary choose any standard of value for the foreign coin he pleases,—as, for example, the exchange value,—and will such action be final, although it is outside of the authority and jurisdiction conferred upon him by the proviso? Can the Secretary first adopt an illegal standard of value, and then make an offer or finding based upon such illegal standard, which cannot be impeached? If the doctrine of conclusiveness goes to this extent, then the importer is no longer governed by the laws which Congress enacts, but by the Secretary's interpretation of them; and the result might be that under the form of reliquidation the pure-metal rule of value in the assessment of duties, which has prevailed since the origin of the government, may be to a large extent nullified. In Greely v. Thompson, 10 How. 225, 234, 13 L. Ed. 397, the supreme court said:

"The orders as well as the opinions of the head of the Treasury Department, expressed in either letters or circulars, are entitled to much respect, and will always be duly weighed by this court; but it is the laws which are to govern, rather than their opinions of them; and importers, in cases of doubt, are entitled to have their rights settled by the judicial exposition of those laws, rather than by the views of the department."

Alleged errors of judgment or of fact, or alleged mistakes or miscalculations, committed by a government officer when acting within the authority conferred by law, are very different in principle from alleged errors springing from a misinterpretation of the law and the adoption of a principle which is contrary to law. The finding by the Director of the Mint of the pure-metal value of foreign coins, as authorized by section 25, or the finding by the Secretary of the Treasury of the requisite difference between the pure-metal value of a foreign coin and the proclaimed value, as authorized by the proviso, is a very different thing from the finding by the Director of the Mint of the exchange value of foreign coins, not authorized by section 25, or the finding by the Secretary of the difference between the exchange value of a foreign coin and the proclaimed value, not authorized by the proviso. Suppose, for example, the Director of the Mint, in his estimate of July 1, 1898, in evidence in the present record, had said: "In pursuance of section 25 of the act of August 27, 1894, I present in the following table an estimate of the values of the standard coins of the nations of the world for the next quarter.

These estimates are not, as heretofore, based on the pure-metal value of such coins, but on their exchange value, as certified by consular certificate. This estimate is in accordance with the provisions of section 25 as I interpret them." And suppose these exchange values had been duly proclaimed by the Secretary of the Treasury, "to be followed in estimating the value of all foreign merchandise exported to the United States on or after July 1, 1898, expressed in any of such metallic currencies." Can it be presumed for a moment that such proclaimed values would be binding and conclusive upon all importers of foreign merchandise? In such a case the Director of the Mint manifestly has transcended the powers conferred upon him by section 25, which declares "that the value of foreign coin * * * shall be that of the pure-metal value." There is here a plain violation of the terms of the statute. The estimate has proceeded on a principle contrary to law. In attacking such an estimate the issue is simply one of law involving the power of the Director of the Mint under the statute. It is a question of illegal action, arising outside of authorized powers, and not of error or mistake committed within the scope of lawful authority. So in the case at bar, assuming the word "value" has the same signification in the proviso as in the body of the section, when the Secretary ordered the reliquidation of the entry in question on a basis other than the pure-metal value of the rupee, or the difference between its pure-metal value and the proclaimed value, he exceeded the powers conferred by statute. He adopted an unauthorized standard of valuation. He proceeded on a wrong principle, contrary to law. The Secretary of the Treasury, the Collector of Customs, the Commissioner of Patents, the officers of the land department, and all officers of the government charged with official duties, must proceed according to law. Within the scope of their statutory powers their acts may be final and conclusive, but acts which are based upon a wrong principle, contrary to law, or which flow from an assumption of authority or jurisdiction not conferred by statute, have never been held to be conclusive and unimpeachable. Some of the authorities are reviewed in the able opinion by Judge SOMERVILLE, speaking for the Board of General Appraisers, in the case at bar. The principle is so clear upon reason, and has been so often recognized, that it is unnecessary to refer to numerous cases. Under section 13 of the customs administrative act the decision of the Board of General Appraisers is made "final and conclusive as to the dutiable value" of imported merchandise. But in respect to such conclusiveness

Mr. Chief Justice FULLER, speaking for the court, in U. S. v. Passavant, said:

"While the general rule is that the valuation is conclusive upon all parties, nevertheless the appraisement is subject to be impeached where the Appraiser or Collector has proceeded on a wrong principle, contrary to law, or has transcended the powers conferred by statute." 169 U. S. 16, 21, 18 Sup. Ct. 219, 42 L. Ed. 644.

In Robertson v. Frank Bros. Co., 132 U. S. 17, 24, 10 Supt. Ct. 5, 7, 33 L. Ed. 236, the court said:

"But it is contended that the act of the Appraiser in making or requiring to be made, the additional charges for transportation and labor, was final and conclusive, and cannot be made the subject of inquiry. It is undoubtedly the general rule that the valuation of merchandise made by the Appraiser, unappealed from, to merchant appraisers, is conclusive. But whilst this is the general rule, it is subject to the qualification that if the Appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement is not unimpeachable. This qualification applies to the acts of many other officials charged with duties of a similar character."

In Muser v. Magone, 155 U. S. 240, 247, 15 Sup. Ct. 77, 80, 39 L. Ed. 135, the court said:

"Yet, though the valuation is final, and not subject to review and change and reconstruction by the verdict of a jury, it is open to attack for want of power to make it; as where the appraisers are disqualified from acting, or have not examined the goods, or illegal items have been added independent of the value. The principle applied in such cases is analogous to that by which the proceedings of a judicial nature are held invalid because of the absence of some strictly jurisdictional fact or facts essential to their validity."

In Shepley v. Cowan, 91 U. S. 330, 340, 23 L. Ed. 424, Mr. Justice FIELD, in the opinion of the court, when speaking of the decisions of the land office, said:

"The officers of the land department are specially designated by law to receive, consider, and pass upon proofs presented with respect to settlements upon the public lands, with a view to secure rights of pre-emption. If they err in the construction of the law applicable to any case, or if fraud is practiced upon them, or they themselves are chargeable with fraudulent practices, their rulings may be reviewed and annulled by the courts when a controversy arises between private parties founded upon their decisions; but,

for mere errors of judgment upon the weight of evidence in a contested case before them the only remedy is by appeal from one officer to another of the department."

See, also, Butterworth v. Hoe, 112 U. S. 50, 5 Sup. Ct. 25, 28 L. Ed. 656; Johnson v. Towsley, 13 Wall. 72, 20 L. Ed. 485; Moore v. Robbins, 96 U. S. 530, 535, 24 L. Ed. 848; Catholic Bishop of Nesqually v. Gibbon, 158 U. S. 155, 15 Sup. Ct. 779, 39 L. Ed. 931; Railroad Co. v. Forsythe, 159 U. S. 46, 61, 15 Sup. Ct. 1020, 40, L. Ed. 71.

The point now taken for the first time by the government that the action of the Collector is not a "decision" within the meaning of section 14 of the customs administrative act is untenable, because the "ascertainment and liquidation of duties" is plainly a "decision" within the meaning of the section.

With respect to section 2652 of the Revised Statutes, it may be observed that, although the Collector must carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws, yet as to third persons the legality of the Collector's action is open to judicial review. Greely v. Thompson, 10 How. 225, 234, 13 L. Ed· 397; Tracy v. Swartwout, 10 Pet. 80, 95, 9 L. Ed. 354.

In conclusion, it would seem that this whole controversy must turn on the true construction of the word "value" in the proviso If the interpretation by the government be correct, and the word signifies exchange value, or any standard of value the Secretary may adopt, then the order for reliquidation, and the action of the Collector thereon, were legal, and conclusive on the importers. If, on the contrary, as we hold, the word "value" signifies pure-metal value, then the Secretary's order for reliquidation was beyond the scope of his authority, and contrary to law, and the action of the Collector was appealable to the Board of General Appraisers, and reviewable by this court, under sections 14 and 15 of the customs administrative act.

For these reasons the decision of the Board of General Appraisers must be affirmed. Decision affirmed.

9.

The U. S. Circuit Court of Appeals in Beebe's second case (122 Fed. Rep., 762—March 10, 1903).

PUTNAM, Circuit Judge. This is an appeal from a decision of the Circuit Court in a customs case, made in accordance with section 15 of an act entitled "An act to simplify the laws in relation to the collection of revenues," approved June 10, 1890, c. 407 (26 Stat. 138). The decision of the Circuit Court was in favor of the importers, and the United States appealed.

The case turns on the construction of section 25 of the act which went into effect August 27, 1894, entitled "An act to reduce taxation, to provide revenue for the government, and for other purposes." Chapter 349, 28 Stat. 552 [U. S. Comp. St. 1901, p. 2375] That is as follows:

"Sec. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchanise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

All the questions involved in this appeal turn on the rules of statutory construction, and the application thereof. The learned Judge of the Circuit Court considered them all carefully. So far as they are not discussed in this opinion, his reasoning and conclusions are accepted by us, and need no addition nor explanation. The main question arises in the following manner:

The importations in issue were of merchandise purchased at Cal-

cutta, and invoiced there in rupees in August, 1898. The bullion value of the rupee at that time, in accordance with the tabulation of the Director of the Mint provided by law, was 19 cents and 9 mills, while its market value at Calcutta, and its value then and there as currency, was 32 cents 1 mill and one-tenth of a mill, being an appreciation of over 60 per cent. This came about in a way quite unexampled in the history of foreign currencies with which the United States have had to deal, and subsequently to the act of 1904.

As is well known, the historical currency of India is in silver rupees, which have there been legal tender for a long period. The only gold currency known there in matters of account with foreign peoples is the English sovereign. The rupee had been the principal coin, and the sovereign the exceptional one. Previous to June, 1893, the mints of India had been bound by law to the free public coinage of silver into rupees, and therefore the rupee circulated at its bullion valae. The legislation of that date closed the mints. For a time thereafter, however, the rupee continued to fall as its bullion value decreased. But it subsequently rose in value, and since January, 1898 (being the year in which the merchandise in question was invoiced), it has been practically stable in mercantile transactions at 32 cents 1 mill and one-tenth of a mill. In 1899, by legislation, the British sovereign was made legal tender in India at the ratio of 15 rupees to the sovereign; thus permanently fixing the currency value of the rupee at substantially the figure which it reached in 1898.

Thus it will be seen that the silver rupee, like our silver dollar, had at the time this merchandise was invoiced a practical value as legal tender far in excess of the bullion value at which, according to law, it was rated by the Director of the Mint; and these changes in value of the rupee accrued after the act of 1894 went into effect. Previous to that act there were no differences with regard to the rupee of the character which we have described as existing in 1898. The prior differences were such as arose from fluctuations of the marketable price of silver. These, except in case of violent changes, would have been approximately and sufficiently provided for by the quarterly determinations of the Director of the Mint. But the fluctuations of the bullion value of the rupee, corresponding to the fluctuations of the market value of silver, were rapid and numerous about and just prior to the passage of the act of 1894. It is true that there had been for some years prior to 1892 a gradual diminution in the market value of silver; but during 1892, 1893, and

1894, it lost fully 50 per cent., so that, while its commercial ratio with reference to gold was represented in 1891 by 20.92, in 1894 it was represented by 32.56. Without going into the details of these fluctuations, it is apparent that at times they must have been violent during the periods prescribed by law for the Director of the Mint. Indeed, in 1893, for some single calendar months, they were more than 20 per cent. of the bullion value of the rupee.

Of course, importations from every country where the basis of the currency was a silver coinage were involved in the same difficulties, growing out of the rapid fluctuations of bullion values immediately prior to the passage of the act of 1894, as those described in connection with the Indian rupee. It is not necessary, however, to go into details of other foreign currencies, or to describe the extent to which they affected the mass of importations, because it is apparent from what we have already said that there was ample occasion for the legislation of 1894 in question in the fluctuations of the bullion value of silver, and therefore no necessity for looking for other inducements thereto.

The question which we have to consider is whether section 25 of the act of 1894 is to be regarded as satisfied by having reference to the state of things existing when it was passed; that is to say, the violent fluctuations in the marketable value of silver, and correspondingly in the bullion value of rupees, which marked that period, or whether it is to be construed so as to cover subsequent differences between the intrinsic worth of the rupee and its worth as legal tender and as money of account. In other words, claiming to proceed under the authority of the proviso in section 25, the Secretary of the Treasury ordered the reliquidation of the entries of this merchandise without regard to pure-metal values, and based on the legal-tender value of the rupee at 32.11; and the question is whether, as a matter of law, this was justified thereby.

Prior to the act of March 3, 1873, c. 268 (17 Stat. 602), as well observed in the opinion of the learned Judge of the Circuit Court, the values of foreign coins for custom purposes were fixed arbitrarily at different times by different statutes; each statute relating to one or more coins. The first section of that act reads as follows:

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

The law conformed to the letter of this provision of statute until the act of 1894 in question here, though modified to require quarterly estimates. This act, being a revenue bill, originated in the House which gave passage to the first portion of section therein; repeating, with the modification of "quarterly" instead of "annually," the phraseology of the act of March 3, 1873, and containing nothing more. The balance of the section, as it now stands, was incorporated into it by the Senate on the recommendation of its finance committee; but no explanation thereof can be found in any report of that committee, or in the debates in the Senate or the House.

Under these circumstances, several rules of construction have been pressed on us as solving the question before us, but none of them are of commanding force. In fact, since legislation has grown to such enormous proportions, the intent is sought for without controlling regard for artificial rules. This has gone so far that even the notion of legislative omniscience, formerly adhered to so strictly that every word was assumed to have a significance of its own, has broken down, so that Congress is now admitted to express itself tautologically. Pirie v. Chicago Title Company, 182 U. S. 438, 444, 21 Sup. Ct. 906, 45 L. Ed. 1171. With this has disappeared the last of all of the rules, in the sense that any undertook to put the courts under subjection with regard to the construction of statutes. In like manner, there has been a modification in the application of the old rule that a proviso in a section of a statute must be accepted as carved out of the principal matter thereof. Nevertheless the rule is of value, and it certainly has weight in the case at bar.

But where the language of a statute is so doubtful as to require and permit construction, the most natural, and therefore the most persuasive, rules are, first, the fifth given by Blackstone, following Lord Coke, that "the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the Legislature to enact it." Commentaries, vol. 1, p. 61. The second is the unavoidable rule that "where a particular construction of a statute will occasion great inconvenience, or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute." Knowlton v. Moore, 178 U. S. 41, 77, 20 Sup. Ct. 747, 44 L. Ed. 969. The first of those is the safer, because it is the universal rule of interpretation, applied to every instrument, that whosoever assumes to con-

strue it must put himself in the position of the parties at the time the instrument was executed; and the application of the second involves a determination of inconveniences, inequalities and injustices, the apparent proportions of which experience shows vary extremely according to the tribunals attempting to weigh such elements, and more especially according to the times when the attempts are made. This rule, therefore, is peculiarly subject to the remark of the Supreme Court, many times repeated, "that no mere omission, no mere failure to provide for contingencies which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute." Pirie v. Chicago Title Company, 182 U. S. 438, 21 Sup. Ct. 906, 45 L. Ed. 1171, *ubi supra*, at page 452, 182 U. S., page 912, 21 Sup. Ct., and 45 L. Ed. 1171.

A striking illustration of the force of the primary rule that, in order to interpret a doubtful instrument or statute, it is necessary to put one's self in a position contemporaneous therewith, is found in connection with the fourteenth amendment. That contained clear expressions, in positive language, so that its application, in the end, proved to be very broad. With reference to all the articles of amendment subsequent to the War of the Rebellion, the Supreme Court said in Slaughter-House Cases, 16 Wall. 36, 72, 21 L. Ed. 394, "Both the language and the spirit of these articles are to have their fair and just weight in any question of construction." But having already observed that all of them were especially addressed to the grievances of the colored race, it added, in limitation of what we have already quoted, as follows:

"But what we do say, and what we wish to be understood, is that, in any fair and just construction of any section or phrase of these amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution, until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it."

If the phraseology of the statute which we have now under construction contained clear and positive expressions, analogous, in this respect, to the fourteenth amendment, we might be obliged, notwithstanding the peculiar circumstances under which the statute was enacted, to give it a sweeping application, altogether beyond those circumstances, but such is not the fact. If the proviso, instead of using the word "money," had used the word "coin," which appears at the opening of section 25, the statute would be clear,

and there could be no question that the construction claimed by the importers should be given to it; yet the interposition of the word "money" in lieu of the word "coin," especially in view of the method, already explained, in which the section was added to after it passed the House, is far from indicating that there was any legislative intention of using one word in any different sense from that in which the other is necessarily understood.

Conforming to the statute, these invoices were expressed in the currency "actually paid for the merchandise by the purchaser." Act June 10, 1890, c. 407, § 3 (26 Stat. 131). As, when the invoices in issue were made, there was no money of account in India expressed in rupees, other than the silver rupee, it follows that in this particular case "the foreign money specified in the invoice" called for by the proviso in section 25 was the silver rupee, so that even if, under some circumstance, the word "money," in that proviso, could theoretically be construed as meaning anything else than "coin," it cannot mean anything else with reference to the particular case with which we have to deal. Moreover, in accordance with settled usage, Webster's Unabridged Dictionary gives as the first definition of "money" "coin, stamped metal," although the secondary meaning of the word is said to include "any currency usually and lawfully employed in buying and selling as the equivalent of money."

"Here, therefore, arises the doubt as to the true construction of the statute in question. For solving this doubt, we have no suggestions in the congressional proceedings, which are often of use as such. We have, for what it is worth, the rule to which we have referred with regard to the construction of provisos. This undoubtedly weighs in favor of the importers, as was stated by the learned Judge in the Circuit Court, and as this aid to construction was explained in United States v. Dickson, 15 Pet. 141, 165, 10 L. Ed. 689, and repeated in Ryan v. Carter, 93 U. S. 78, 83, 23 L. Ed. 807. That was to the effect that the general rule is "that a proviso carves special exceptions only out of the body of the act." So much of that portion of section 25 which came in by amendment in the Senate as precedes the proviso was clearly expressed to change the law with reference to the time at which the value of foreign coins is to be ascertained. Heinemann v. Arthur's Executors, 120 U. S. 82, 85, 7 Sup. Ct. 446, 30 L. Ed. 605. But the use of the word "money" in the proviso, in lieu of the word "coin" in the earlier part of the section, cannot, in any view, be held as of so decisive a character as

to avoid the application of the rule of construction last referred to, even under the modern practice with reference to all such rules.

The reason for this proviso can be suggested only by the fact of the numerous violent fluctuations in the market value of silver, and in the corresponding market value of rupees, which we have fully explained, and this brings us under the leadership of the safest guide for the construction of a statute, already referred to; that is, the consideration of the causes which moved the Legislature. The circumstance that the legal-tender value of the rupee far exceeded its bullion value, which is now presented, did not exist when the act of 1894 was passed, and it could not have been in the contemplation of Congress. In fact, it may be said never to have previously existed, so far as known to our customs system. Some trace of it is indicated in the circulating money of Puerto Rico in February, 1895. Circular letter from the Acting Secretary of the Treasury, Synopsis of Treasury Decisions, 15606. It there appears that, on account of the prohibition of the importation of Mexican dollars into Puerto Rico, those dollars had in that island in February, 1895, a value greater than that of the pure silver contained therein. The circular says that the department had been so advised by the Director of the Mint; and its whole tenor leads to the inference that it was a fact which had either just been developed, or was then first brought to the attention of the United States. Therefore this fact not only succeeded the legislation in question, but it was a comparatively minor one, while the violent fluctuations of silver affected the entire commercial world; and it cannot reasonably be doubted that the purpose of Congress in section 25, under consideration, was with reference thereto. As that purpose is clearly accomplished, it is not necessary to strain a doubtful expression to meet the issue before us.

Two minor considerations strengthen this view of the statute: First, the Treasury Department, when everything was fresh, and the circumstances under which the legislation of 1894 was enacted must have been known, made no pretense to give the construction to this statute which the United States now assert. It met the Puerto Rico difficulty, as is shown by the circular letter of February, 1895, by reference solely to section 2903 of the Revised Statutes [U. S. Comp. St. 1901, p. 1922], providing especial relief as to duties on merchandise the original cost of which was in a depreciated currency. This view was re-inforced by a letter from the Acting Secretary of the Treasury to the Collector of Customs at Bos-

ton, of May 8, 1895. Synopsis of Decisions, 16037. Indeed, it is apparent from the record in the case, and from the opinion of the learned Judge in the Circuit Court in United States v. Newall, 91 Fed. 525, that even then the same position was taken by the department, enforced by its letter to the Collector of Customs at Boston of May 12, 1896. While this construction of this statute by the Treasury did not continue for so long a period that it has direct weight under the ordinary rule with reference to the practical effect given to legislation by the executive departments, yet it supports strongly the proposition which we have sought to make clear—that the historical circumstances out of which the legislation arose, and which it had in contemplation, were not of the character presented by the case at bar.

Further, it is to be considered that section 2903 of the Revised Statutes cannot be held to have been repealed by section 25 of the act of 1894. That it was not so repealed by the act of 1873, to which we have referred, was clearly assumed in The Collector v. Richards, 23 Wall. 246, 23 L. Ed. 95, and apparently so held in Cramer v. Arthur, 102 U. S. 612, 26 L. Ed. 259. That the Treasury Department regards section 2903 as still in force is apparent from Customs Regulations 1899, art. 409, which continues to provide for proper proceedings thereunder. Inasmuch as section 25 applies not only when there is an appreciated currency, but also when there is a depreciated one, using the words "more or less," it would follow that, if the present position of the United States is correct, there would be, with reference to depreciated paper currency, two radically distinct and inconsistent methods of liquidating entries, which certainly could not be accepted as the fact.

Thus it follows that everything which we have to guide us in the construction of the statute in question leads to the conclusion reached by the Circuit Court, unless it can be said that there is to be an exception in favor of the rule for avoiding great inconvenience, inequality, or injustice, referred to in Knowlton v. Moore, 172 U. S. 41, 77, 20 Sup. Ct. 747, 44 L. Ed. 969, *ubi supra*. As the conditions existed at the date of these invoices, a merchant importing skins or other merchandise from Italy, invoiced in lire, the equivalent of French francs, would, under our construction of the statute, have paid sixty per centum more duty than the merchant purchasing and invoicing exactly the same class of merchandise at Calcutta. Not only would this be an injustice, but, if it had a considerable place and became chronic, it might well be held to con-

travene the "favored nation" clauses found in so many of our treaties. Whether such conditions have ever existed has not been brought to our attention in such manner as to enable us to say positively that they could take on the features which we have suggested. Certain it is, however, that as these contingencies could not have been anticipated by Congress in 1894, their possibility affords no substantial assistance in considering a statute passed at that date. If they now exist, or ever have existed, it has been at all times in the power of Congress, by enacting a very few words into a statute, to afford a remedy.

The United States raise a question of the jurisdiction of the Board of General Appraisers. On that point we need add but very little to what was said in the Circuit Court. The act of June 10, 1890, c. 407 (26 Stat. 131), is the law which established this tribunal. The United States rest on the words "decision of the Collector," found in section 14, and they claim that in the case at bar the "decision" was not that of the Collector of Boston, but of the Secretary of the Treasury. This is a narrow construction of the expression, because the ultimate tribunal which reliquidated was not the Secretary, but the Collector, so that at common law mandamus would lie only against the latter, and not against the former. This position, moreover, begs the question, because, if the action of the Secretary was unlawful, as we hold it was, the Collector could rest nothing done by him on that action, and whatever he did was his own.

The United States rely on United States v. Klingenberg, 153 U. S. 93, 14 Sup. Ct. 790, 38 L. Ed. 647. The opinion in that case is a very elaborate one, growing out of lack of compliance with the statutes on the part of the importer at the very origin of the transaction; that is when he took his invoice. Several things said in it may be regarded as dicta; but, however that may be, United States v. Passavant, 169 U. S. 16, 18 Sup. Ct. 219, 42 L. Ed. 644, must be held to broaden the view of the jurisdiction of the Board of General Appraisers when there is involved a mere question of law, such as arises at bar on the letter of instructions from the Secretary to the Collector.

A useful discussion of the general power of the courts to revise questions of law arising on the face of proceedings by executive departments will be found in American School of Magnetic Healing v. McAnnulty, 187 U. S. 94, 23 Sup. Ct. 33, 47 L. Ed. ——. We also

refer to Hyatt v. Corkran, 188 U. S. 691, 23 Sup. Ct. 456, 47 L. Ed. ——.

We are of opinion that the conclusion of the Circuit Court was correct. The judgment of the Circuit Court is affirmed.

10.

The General Appraisers' decision in the case at bar, is found at record, pp. 14–20.

11.

The U. S. Circuit Court in the case at bar rendered decision pro forma, sustaining the General Appraisers.

12.

The U. S. Circuit Court of Appeals in the case at bar (129 Fed. Rep., 33—March 14, 1904).

BOYD, District Judge. The facts in this case are substantially as follows: Stone, the appellant, is Collector of Customs for the district and port of Baltimore, Md. In June, 1900, Whitridge, White & Co., the appellees imported from India into the port of Baltimore a cargo of gunny bagging. The gunnies were purchased by the importers of Calcutta, and were invoiced in rupees, which is a silver coin of India. The Barrowmore, in which the gunnies were brought into this country, arrived in Baltimore on the 18th of June, 1900, and the goods were entered for consumption on that day. On the 11th of July, 1900, the Collector of Baltimore liquidated the duty on the said goods by converting into United States gold dollars the rupees of the invoices at the rate of 32 cents for each rupee. To this liquidation the importers entered a protest in writing on the 16th day of July, 1900, and on the 29th of May, 1901, the Collector, acting under instructions from the Secretary of the Treasury, reliquidated the duty on said goods by converting into United State gold dollars the rupees of the invoices at the rate

of 20.7 cents for each rupee. That thereafter, on the 12th day of June, 1901, the Collector again reliquidated the invoices, and placed the value of the rupee at 32 cents. This last action of the Collector was in response to instructions from the Secretary of the Treasury, relative to these invoices, as follows:

"In this regard I have to inform you that satisfactory evidence has been produced, to the Secretary of the Treasury, showing that the value in United States currency, of the foreign money of the invoices, namely, the rupee of India was 32 cents at the date of certification, which is ten per cent. more than the value proclaimed during the quarter in which the consular certification occurred. In view of the fact stated, you are hereby directed to reliquidate the entries hereinbefore mentioned, on the basis of this latter value, under the authority conferred upon the Secretary of the Treasury, by the proviso to Section 25 of the act of August 28th, 1894."

To this reliquidation the appellees duly filed a protest in writing with the Collector at Baltimore. The goods imported are dutiable at five-eighths of a cent a pound upon the weight as taken in the reliquidation of June 12, 1901, and in addition thereto at the rate of 15 per cent. of their dutiable value. It is admitted that the metallic value of the rupee on April 19, 1900, the date on which the invoices in this case were certified, was substantially 20.7 cents, and at no time between the 1st of April, 1900, and the 1st of July, 1900, did the metallic value of the rupee even approximate 32 cents. It is further admitted that the reliquidation made by the Collector on the 12th of June, 1901, to which the importers objected, and which is the basis of this proceeding, in which the Indian rupee was valued at 32 cents, was the exchange value of the rupee at the date of the certification of the invoices, as shown and attested by the certificate of the United States Consul General at Calcutta. On the 1st of April, 1900, acting under the authority of law, the Director of the Mint had estimated the metallic value of an Indian rupee to be 20.7 cents, and this valuation was duly proclaimed by the Secretary of the Treasury. The action of the Secretary of the Treasury in directing a reliquidation of the invoices upon which the present controversy arises was based upon an opinion of the Secretary that, after the estimate of the Director of the Mint, and the proclamation thereon, the value of the Indian rupee during the quarter had varied as much as 10 per cent.; that its value had appreciated this much, or more, and that the invoices of the gunnies imported by the appellees should be reliquidated for

duty at the exchange or commercial value of the Indian rupee, which was certified by the Consul, and not at the metallic value, which had been estimated by the Director of the Mint. As before stated, against the reliquidation of June 12, 1901, made by the Collector of Baltimore under the instructions of the Treasury Department, the appellees protested, and this protest, with the facts in the case, was submitted by the Collector to the Board of General Appraisers at New York. This Board rendered a decision adverse to the Collector, declaring, in effect, that the metallic, and not the commercial, value of the Indian rupee at the time of the invoices was the true basis of liquidation. From this decision the case was brought by petition on behalf of the Collector to the Circuit Court for the District of Maryland. The Circuit Court affirmed the decision of the Board of General Appraisers, and the Collector appealed to this court.

The appellant lays down two propositions, namely, that the liquidation of June 12, 1901, was the decision of the Secretary of the Treasury, and was final, and that the Board of General Appraisers had no jurisdiction to review it, The question here is, therefore, can these positions, or either of them, be maintained? We think not. The Customs Administrative Act of June 10, 1890, c. 407, § 14, 26 Stat. 137 [U. S. Comp. St. 1901, p. 1933], plainly provides that, when the Collector of Customs has liquidated invoices for duty the owner or importer may, after such liquidation, give notice in writing to the Collector of his objections thereto, and, if the merchandise is entered for consumption, shall pay the full amount of the duties and charges ascertained to be due thereon; and upon such notice and payment the collector shall transmit the invoice, and all the papers and exhibits connected therewith, to the Board of three General Appraisers, which shall be on duty at the port of New York, etc., which Board shall examine and decide the case thus submitted, and their decision, or that of a majority of them, shall be final and conclusive upon all persons interested therein. * * * Section 15 of said act provides for an appeal from the decision of the Board of General Appraisers to the Circuit Court of the United States on behalf of either party.

The appellant contends that the action submitted to the Board of General Appraisers was not that of the Collector of Customs at Baltimore, but was a decision of the Secretary of the Treasury, made in the discharge of the duties imposed upon him by law, and that the Board of General Appraisers has no authority in law to

review him. It is insisted on the part of the appellant that Congress could not have intended to submit the decision of the Secretary of the Treasury, upon matters in which the statute imposes upon him the responsibility of deciding, to review, and possibly reversal, by subordinate divisions of his own department. We cannot agree that in exercising the powers of review vested in the Board of General Appraisers by law the Board is a subordinate division of the Treasury Department. On the other hand, the members of the Board of General Appraisers are appointed by the President, by and with the advice and consent of the Senate, and, acting within its jurisdiction, the Board is an independent tribunal, empowered by law to pass upon certain controversies between the government and the importer, and in this respect the Board is no more subordinate to the Treasury Department than is any other court. As bearing upon this view, we may refer to the fact that by section 15 of the administrative customs act it is provided, among other things, that, if the Secretary of the Treasury is dissatisfied with the action of the Board, his only relief is by appeal to the Circuit Court of the United States. It may be well at this juncture to give the full text of section 25 of the act of Congress of August 28, 1894, c. 349, 28 Stat. 552, upon the construction of which the questions involved in this case depend. That section reads as follows:

"That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value, and the values of the standard coins in circulation of the various nations of the world, shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act, and thereafter quarterly on the first day of January, April, July and October, in each year, and the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: provided, that the Secretary of the Treasury may order the liquidation of any entry at a different value whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

In disposing of the questions presented, and especially that in which it is insisted by the appellant that the reliquidation of June 12,

1901, was a decision of the Secretary of the Treasury, and therefore final, without power in the Board of General Appraisers or the courts to review it, it is perhaps as well to consider the reasons which must have led to the enactment of the law which we have just quoted, and by this method we may arrive at the true meaning of the legislation. We find that for many years in the administration of our tariff laws great difficulties had been encountered in so adjusting the value of goods purchased in foreign countries and invoiced in foreign money as to be altogether fair, in every instance, to the government and to the importer. Especially was this true of importations of goods which had been purchased in countries where silver coin was the standard money. This condition gave rise to disagreements between the government and the importers, and often the aid of the courts was invoked to relieve the situation. The Congress, no doubt appreciating existing conditions, undertook to set the matter at rest by the act of March 3, 1873, c. 268, 17 Stat. 602, by which it was enacted:

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value, and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

This act was plain, and there could be no doubtful construction of its terms. It provided that the metallic value of foreign coin should be estimated annually by the Director of the Mint, and proclaimed on the 1st day of January by the Secretary of the Treasury. When so estimated and proclaimed, the value of foreign coin for the purposes of liquidation of invoices of imported goods was settled, and had the force of a statute, which controlled the action of the Collectors and other officers of the customs in determining import duties, and it was in view of this statute that the decisions in Hadden v. Merritt, 115 U. S. 25, 5 Sup. Ct. 1169, 29 L. Ed. 333, and The United States v. Klingenberg, 153 U. S. 93, 14 Sup. Ct. 790, 38 L. Ed. 647, were made, as was also the decision in Cramer v. Arthur, 102 U. S. 612, 26 L. Ed. 259, that the valuations of foreign standard coins made by the Director of the Mint and proclaimed by the Secretary of the Treasury were conclusive and binding both on Collectors of Customs and on importers, and that evidence to show that such valuations were inaccurate was not receiv-

able. In the latter case the principle declared in Collector v. Richards, 23 Wall. 246, 23 L. Ed. 95, was cited and reaffirmed. These several decisions are upon the ground that the Director of the Mint, in basing his estimate upon the metallic value of foreign coin, had acted within the scope of the authority conferred upon him by the statute, and, having so acted, his finding of fact became the law as fully as if his estimate had been incorporated in the statute itself.

Section 25 of the act of August 28, 1894, excepting the proviso, was a substantial re-enactment of the law of 1873, the only change being that the Director of the Mint should make his estimates of the value of foreign coin quarterly, instead of annually, as provided in the previous law. And then comes the proviso:

"That the Secretary of the Treasury may order the liquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him, showing that the value in United States currency of the foreign money specified in the invoice was, at the date of the certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

That frequent fluctuations in the metallic value of foreign coins led to the act of 1894 would seem to be indisputable. The law as it stood since 1873 empowered the Director of the Mint to make his estimate of the metallic value of foreign coin on the 1st day of January in each year, but Congress saw the necessity of having this estimate made quarterly, instead of annually, but still adhered to the metallic value as the basis of the estimate. Then where can we find a reason to conclude that it was the intention of Congress to make a departure from the metallic principle which permeated its legislation, and confer upon the Secretary of the Treasury an exclusive power to arbitrarily adopt another basis? Is it not more in accord with the language of the statute, the purposes for which it was enacted, the conditions it was intended to meet, and fair construction, to hold that the proviso was inserted in the act simply to authorize the Secretary of the Treasury, in case there should be a variation in the metallic value of the foreign coin after the Director of the Mint had made his estimate at the first of the quarter, and before, by the terms of the law, he could make another estimate at the beginning of the next quarter, to order liquidations when it was made satisfactorily to appear to him that such variations in the metallic value to the extent of 10 per centum had taken place? If

such is not the law, then under the proviso of section 25 the Secretary of the Treasury is absolutely unrestrained. He is neither limited by the metallic value nor by the exchange value of the foreign coin, but he may, at his option, prescribe any value for foreign coin, and direct its use by officers of the customs in the invoicing of foreign goods for duty; and, following out the contention of the appellant in this case, the importer would have no remedy whatever, either through the Board of General Appraisers, or the courts. Certainly Congress did not intend to confer such unbridled power upon the head of an executive department.

This question is admirably discussed in two very learned opinions recently delivered, the one in the Circuit Court of the United States for the District of Massachusetts, in the case of The U. S. v. Beebe, 117 Fed. 670, and the other in the same case in the Circuit Court of Appeals for the First Circuit, 122 Fed. 762, 58 C. C. A. 562. It is not necessary for us to go further than to cite the opinions in these two cases, which we think declare the law as it is, and proceed upon a line of reasoning which leads irresistibly to the conclusion that, when the Secretary of the Treasury undertook to order a reliquidation of the foreign invoices for duty upon a basis other than the metallic value of the foreign coin in which such invoices were certified, he went beyond his authority, and his act had no legal effect.

We then come to the consideration of the question as to whether the decision of the Secretary of the Treasury and the subsequent action of the Collector of Customs thereunder can be reviewed by the Board of General Appraisers and by the courts. We cannot put this question more forcibly than by quoting from the comprehensive opinion of Judge COLT in the Beebe Case, 117 Fed. 670, the following language:

"Can the Secretary choose any standard of value for the foreign coin he pleases—as, for example, the exchange value—and will such action be final although it is outside of the authority and jurisdiction conferred upon him by the proviso? Can the Secretary first adopt an illegal standard of value, and then make an order or finding based upon such illegal standard which cannot be impeached? If the doctrine of conclusiveness goes to this extent, then the importer is no longer governed by the laws which Congress enacts, but by the Secretary's interpretation of them; and the result might be that under the form of reliquidation the pure metal rule of value in the assessment of duties, which has prevailed since the origin of the government, may to a large extent be nullified."

It is conceded that, if the ascertained metallic value of the silver rupee of India, either that made by the Director of the Mint at the first of the quarter and proclaimed by the Secretary, or a metallic value determined by the Secretary under the proviso of section 25, had been adopted by the Collector, in making the reliquidation of invoices of the appellees' goods on the 12th of June, 1901, under the decisions before cited, such action by the Collector would have been conclusive. But the Collector did not do this. On the other hand, acting under instructions from the Secretary of the Treasury, he adopted as a basis of liquidation the commercial value of the rupee, as certified by the American Consul at Calcutta, at the date of the invoices. The instruction was the act of the Secretary, but the liquidation ascertaining the dutiable value of the goods and determining the amount of duty to be paid by the importer was the act of the Collector. "The action of a Collector in declining to accept the proclaimed value of a foreign standard coin and in adopting another standard, thereby increasing the amount of duty on imported merchandise, does not relate to a disputed appraisement, but to the amount of duties; and under Customs Administrative Act June 10, 1890, §§ 14, 15, is reviewable on the protest of the importer by the Board of General Appraisers and the Circuit Court." U. S. v. J. Allston Newhall & Co. (C. C.) 91 Fed. 525. In the present case the Collector ignored the metallic value of the rupee—20.7 cents—which had been proclaimed for the quarter in which the importation of the goods was made, and adopted the exchange value of 32 cents, which appeared from the certificate of the Consul, and thus increased the amount of duty upon the importation. The principle declared in the Newhall Case, which we hold to be the law, applies here, and, in our opinion, the Board of General Appraisers and the Circuit Court of the United States had jurisdiction.

As bearing upon this point, and in entire accord with the position we take, we quote again from the learned opinion of the Circuit Court of Appeals for the First Circuit in the case of the United States v. Beebe & Sons, 122 Fed. 762, 58 C. C. A. 562, in which Judge PUTNAM, in delivering the opinion of the court, says:

"The United States raises a question of the jurisdiction of the Board of General Appraisers. On that point we need add but very little to what was said in the Circuit Court. The act of June 10, 1890, c. 407, 26 Stat. 131, is the law which established this tribunal.

The United States rests on the words 'decision of the Collector,' found in section 14, and they claim that in the case at bar the 'decision' was not that of the Collector of Boston, but of the Secretary of the Treasury. This is a narrow construction of the expression, because the ultimate tribunal which reliquidated was not the Secretary, but the Collector; so that at common law mandamus would lie only against the latter, and not against the former. This position, moreover, begs the question, because, if the action of the Secretary was unlawful—as we hold it was—the Collector could rest nothing done by him on that action, and whatever he did was his own."

The judgment of the Circuit Court is affirmed.